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United Nations

Report
# of the Human Rights Committee

Volume I

Seventy-ninth session
(20 October-7 November 2003)
Eightieth session
(15 March-2 April 2004)
Eighty-first session
(5-30 July 2004)

General Assembly
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Fifty-ninth session
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Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Summary

The present annual report covers the period from 1 August 2003 to 31 July 2004 and the seventy-ninth, eightieth and eighty-first sessions of the Human Rights Committee. Since the adoption of the last report, three States (Timor-Leste, Turkey and Swaziland) became parties to the International Covenant on Civil and Political Rights while the Czech Republic, Estonia, Paraguay and Timor-Leste became parties to the Second Optional Protocol, thus bringing the total of States parties to the Covenant to 153 and of States parties to the Second Optional Protocol to 53. The number of States parties to the Optional Protocol remained unchanged at 104.

During the period under review, the Committee considered 13 periodic reports under article 40 and adopted concluding observations on them (seventy-ninth session: Russian Federation, Sri Lanka, Latvia and the Philippines; eightieth session: Colombia, Suriname, Uganda, Lithuania and Germany; eighty-first session: Belgium, Namibia, Liechtenstein and Serbia and Montenegro). It further considered two country situations in the absence of a report from the State party and adopted provisional concluding observations in that respect. The provisional concluding observations on the country situation of the Gambia and Equatorial Guinea were converted into final concluding observations, pursuant to rule 69A, paragraph 3, at the end of the eighty-first session.

Under the Optional Protocol procedure, the Committee adopted 37 Views on communications and declared 3 communications admissible and 29 inadmissible. Consideration of 17 communications was discontinued (see chapter IV below for the concluding observations and chapter V for information on Optional Protocol decisions).

The Committee's procedure for following up on concluding observations, initiated in 2001, continued to develop during the reporting period. The Special Rapporteur for follow-up on concluding observations, Mr. Maxwell Yalden, presented progress reports during the seventy-ninth, eightieth and eighty-first sessions of the Committee. The Committee notes with appreciation that the great majority of States parties have provided follow-up information to the Committee pursuant to rule 70, paragraph 5, of its rules of procedure, and expresses its appreciation to those States parties that have provided timely follow-up information.

The Committee again deplores the fact that many States parties do not comply with their reporting obligations under article 40 of the Covenant. In 2001, it therefore adopted a procedure for dealing with non-reporting States. Under this procedure, the Committee, during its seventy-ninth and eighty-first sessions, respectively, considered the measures taken by Equatorial Guinea and the Central African Republic to give effect to the rights recognized in the Covenant, in the first case without a report and in the absence of a delegation, in the second case in the absence of a report but in the presence of a delegation. In accordance with rule 69A, paragraph 1, of its revised rules of procedure, the Committee adopted provisional concluding observations on the measures taken by these States parties to give effect to the rights recognized in the Covenant, which were transmitted to the States parties concerned.

The workload of the Committee under the Optional Protocol to the Covenant continued to grow during the reporting period, as demonstrated by the large number of cases registered. A total of 103 communications were registered under the Optional Protocol and by the end of the eighty-first session, a total of 279 communications were pending, more than ever before (see chapter V).

The Committee again notes that many States parties have failed to implement the Views adopted under the Optional Protocol. Through its Special Rapporteur for follow-up on Views, Mr. Nisuke Ando, the Committee has continued to seek to ensure implementation of its Views by States parties by arranging meetings with representatives of States parties that have not responded to the Committee's request for information about the measures taken to give effect to its Views, or that have given unsatisfactory replies to its request (see chapter VI).

On 29 March 2004, during its eightieth session, the Committee adopted general comment No. 31 on article 2 of the Covenant, on the nature of the general legal obligations imposed on States parties to the Covenant. This general comment is reproduced in annex III to the present report. During its eightieth session, the Committee decided to devote its next general comment to a revision of general comment No. 13 (21) on article 14 of the Covenant.

Throughout the reporting period, the Committee continued to contribute to the discussion prompted by the Secretary-General's proposals for reform and streamlining of the treaty body system. The Chairperson, Mr. Amor, and Mr. Rivas Posada and Mr. Yalden represented the Committee at the third inter-committee meeting, held on 21 and 22 June 2004.

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CHAPTER I. JURISDICTION AND ACTIVITIES

A. States parties to the International Covenant on Civil and Political Rights

1. By the end of the eighty-first session of the Human Rights Committee, there were 153 States parties[1] to the International Covenant on Civil and Political Rights and 104 States parties to the Optional Protocol to the Covenant. Both instruments have been in force since 23 March 1976.

2. Since the last report Timor-Leste, Turkey and Swaziland have become parties to the Covenant.

3. As at 31 July 2004, there was no change in the number of States (47) which had made the declaration envisaged under article 41, paragraph 1, of the Covenant. In this respect, the Committee appeals to States parties to make the declaration under article 41 of the Covenant and to use this mechanism, with a view to making the implementation of the provisions of the Covenant more effective.

4. The Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty entered into force on 11 July 1991. As at 31 July 2004, there were 52 States parties to the Protocol, an increase since the Committee's last report of four: Czech Republic, Estonia, Paraguay and Timor-Leste. In addition, San Marino signed the Second Optional Protocol on 26 September 2003 and Turkey on 6 April 2004.

5. A list of States parties to the Covenant and to the two Optional Protocols, indicating those States which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

6. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in the notifications deposited with the Secretary-General. On 12 January 2004, the Government of Switzerland notified the Secretary-General of its decision to withdraw its reservation to article 14, paragraph 3 (d) and 3 (f), to the effect that the guarantee of free legal assistance assigned by the court and of the free assistance of an interpreter does not definitely exempt the beneficiary from defraying the resulting costs. The Committee welcomes the withdrawal of this reservation and encourages other States parties to the Covenant to consider withdrawing their reservations to the Covenant.

B. Sessions of the Committee

7. The Human Rights Committee held three sessions since the adoption of its previous annual report. The seventy-ninth session was held from 20 October to 7 November 2003, the eightieth session was held from 15 March to 2 April 2004, and the eighty-first session was held from 5 to 30 July 2004. The eighty-first plenary session was scheduled for four weeks - the week of meetings initially scheduled for the working group was converted into an additional week of meetings of the plenary. The Committee's decision to this effect and the programme budget implication statement are included in annex VI to the present report. The seventy-ninth and eighty-first sessions were held at the United Nations Office at Geneva, the eightieth session at United Nations Headquarters.

C. Election of officers

8. On 17 March 2003 the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

Chairperson:	Mr. Abdelfattah Amor
Vice-Chairpersons:	Mr. Rafael Rivas Posada Sir Nigel Rodley Mr. Roman Wieruszewski
Rapporteur:	Mr. Ivan Shearer

9. During its seventy-ninth, eightieth and eighty-first sessions, the Committee held nine Bureau meetings (three per session), with interpretation. Pursuant to the decision taken at the seventy-first session, the Bureau records its decisions in formal minutes, which are kept as a record of all decisions taken.

D. Special rapporteurs

10. The Special Rapporteur on follow-up of views, Mr. Nisuke Ando, continued his functions during the reporting period. During the eightieth session, Mr. Ando presented a progress report on his follow-up activities to the plenary. During the eightieth session, Mr. Ando met with a representative of Peru. During the eighty-first session, he met with representatives of the Philippines and Canada.

11. The Special Rapporteur on new communications, Mr. Martin Scheinin, continued his functions during the reporting period. He registered 103 communications, transmitted these communications to the States parties concerned, and issued 32 decisions on interim measures of protection pursuant to rule 86 of the Committee's rules of procedure.

12. The Special Rapporteur on follow-up to concluding observations, Mr. Maxwell Yalden, continued his functions during the reporting period. During the seventy-ninth session, he met with representatives of Uzbekistan and Sweden; during the eightieth session, he met with a representative of the Republic of Moldova; during the eighty-first session, he met with representatives of Yemen. He presented progress reports on his activities to the plenary at the seventy-ninth, eightieth and eighty-first sessions.

E. Working groups and country report task forces

13. In accordance with rules 62 and 89 of its rules of procedure, the Committee established a working group which met before each of its three sessions. The working group was entrusted with the task of making recommendations regarding communications received under the Optional Protocol. The former working group on article 40, entrusted with the preparation of lists of issues concerning the initial or periodic reports scheduled for consideration by the Committee, has been replaced since the seventy-fifth session (July 2002) by country report task forces.[2] Country report task forces met during the seventy-ninth, eightieth and eighty-first sessions to consider and adopt lists of issues on the reports of Germany, Uganda, Suriname,

Belgium, Lithuania, Serbia and Montenegro, Liechtenstein, Namibia, Finland, Albania, Poland, Benin and Morocco, as well as on the situation of civil and political rights in Kenya (non-reporting State).

14. United Nations bodies (the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Untied Nations Development Programme (UNDP)) and specialized agencies (the International Labour Organization (ILO) and the World Health Organization (WHO)), provided advance information on several of the reports to be considered by the Committee. To that end, country report task forces also considered material submitted by representatives of a number of international and national human rights non-governmental organizations (NGOs). The Committee welcomed the interest shown by and the participation of those agencies and organizations and thanked them for the information provided.

15. At the seventy-ninth session the Working Group on Communications was composed of Mr. P.N. Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè-Ahanhanzo, Mr. Walter Kälin, Mr. Rivas Posada, Mr. Scheinin, Mr. Hipólito Solari Yrigoyen and Mr. Wieruszewski. Mr. Rivas Posada was designated Chairperson-Rapporteur. The Working Group met from 13 to 17 October 2003.

16. At the eightieth session the Working Group on Communications was composed of Ms. Ruth Wedgwood, Mr. Ando, Mr. Bhagwati, Mr. Depasquale, Mr. Kälin, Mr. Rivas-Posada, Mr. Shearer, Mr. Solari Yrigoyen, Mr. Wieruszewski and Mr. Yalden. Mr. Shearer was designated Chairperson-Rapporteur. The Working Group met from 8 to 12 March 2004.

17. No Working Group on Communications was convened during the eighty-first session. The week initially scheduled for meetings of the Working Group was converted into meetings of the plenary (see paragraph 7 above).

F. Secretary-General's recommendations for reform of the treaty bodies

18. In his second report on further reform of the United Nations system (A/57/387 and Corr.1), the Secretary-General invited the human rights treaty bodies to further streamline their reporting procedures and suggested that, to enable States to meet the challenges they faced under multiple reporting obligations, the States parties to the main human rights instruments be permitted to submit a single or consolidated report which would cover the implementation of their obligations under all the instruments they had ratified.

19. The Committee has participated in, and contributed to, the discussions which were prompted by the Secretary-General's proposals. At its seventy-sixth session, it set up an informal working group to analyse and discuss the proposals and report back to the plenary at the seventy-seventh session. In March 2003 (seventy-seventh session), the plenary discussed the working group's recommendations. It did not consider the concept of a single or consolidated report to be a viable one, but adopted a recommendation which, if implemented, would enable States parties to submit to the Committee focused reports on the basis of lists of issues transmitted previously to the States parties concerned. This system would be applied after the presentation, by the States parties concerned, of an initial and one periodic report.

20. The Committee was represented at the third inter-committee meeting, held on 21 and 22 June 2004, where the issue of treaty body reform was discussed in detail.

21. The third inter-committee meeting discussed in particular a secretariat paper which contained draft guidelines for the preparation of an "expanded core document", which States parties to the principal United Nations human rights instruments would submit to all treaty bodies, supplemented by targeted treaty-specific reports.

22. Participants in the third inter-committee meeting considered that the secretariat paper featured many interesting ideas that deserved to be discussed further. They designated a rapporteur from among the participants, who will liaise with all treaty bodies and the secretariat on the issue of the expanded cord document. The secretariat was invited to conduct further work on the draft guidelines; all treaty bodes were encouraged to study the secretariat paper and comment on it, in preparation for the fourth inter-committee meeting in June 2005. The Human Rights Committee intends to hold a plenary debate on the issue of the expanded core document during its eighty-second session in October 2004.

G. Related United Nations human rights activities

23. At all of its sessions, the Committee was informed about activities of United Nations bodies dealing with human rights issues. In particular, the relevant general comments and concluding observations of the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee against Torture were made available to the members of the Human Rights Committee. Relevant developments in the General Assembly and the Commission on Human Rights were also discussed. The Acting United Nations High Commissioner for Human Rights, Mr. Bertrand G. Ramcharan, addressed the seventy-ninth session of the Committee. The new High Commissioner, Ms. Louise Arbour, addressed the eighty-first session of the Committee.

24. On the opening day of the seventy-ninth session, the Committee observed a minute of silence to honour the memory of Sergio Vieira de Mello, the late High Commissioner for Human Rights killed in Baghdad on 19 August 2003.

H. Derogations pursuant to article 4 of the Covenant

25. Article 4, paragraph 1, of the Covenant stipulates that in time of public emergency, States parties may take measures derogating from certain of their obligations under the Covenant. Pursuant to paragraph 2, no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Pursuant to paragraph 3, any derogation must be immediately notified to the States parties through the intermediary of the Secretary-General. A further notification is required upon the termination of the derogation.

26. In cases of derogation the Committee considers whether the State party has satisfied the conditions of article 4 of the Covenant and, in particular, insists that the derogation be terminated as soon as possible. When faced with situations of armed conflict, both external and internal, which affect States parties to the Covenant, the Committee will necessarily examine whether these States parties are complying with all of their obligations under the Covenant. On the interpretation of article 4 of the Covenant, reference is made to the Committee's practice under the reporting and the Optional Protocol procedures. The Committee's general comment No. 29, adopted in July 2001, establishes guidelines that States parties are required to respect during a state of emergency.[3]

27. For States parties to the Covenant, the continued practice of derogations has frequently been a subject of discussion in the context of the consideration of State party reports under article 40 of the Covenant and has often been identified as a matter of concern in the concluding observations. While not questioning the right of States parties to derogate from certain obligations in states of emergency, in conformity with article 4 of the Covenant, the Committee always urges States parties to withdraw the derogations as soon as possible.

28. For States parties to the Optional Protocol, the Committee has considered derogations in the context of the consideration of individual communications. The Committee has consistently given a strict interpretation to derogations and, in some cases, has determined that notwithstanding the derogation, the State party concerned was responsible for violations of the Covenant.

29. During the period under review, the Government of Peru notified other States parties, through the intermediary of the Secretary-General, on 10 September 2003, of the adoption of Supreme Decree 077-2003-PCM of 27 August 2003, which declared a state of emergency for a period of 30 days, and Supreme Decision No. 289-DE/SG of 27 August 2003. The Government of Peru specified that for the duration of the state of emergency, the provisions of the Covenant from which it would reserve the right to derogate were articles 9, 12, 17 and 21.

30. By notifications of 30 September and 1 December 2003, 27 January, 30 March, 12 April, 3, 4 and 13 May and 2 June 2004, the Government of Peru extended the state of emergency in different provinces and parts of the country. In these notifications, the Government of Peru specified that the provisions of the Covenant from which it would reserve the right to derogate were articles 9, 12, 17 and 21.

I. General comments under article 40, paragraph 4, of the Covenant

31. Having discussed earlier drafts during its seventy-eighth and seventy-ninth sessions, the Committee, on 29 March 2004, during the eightieth session, adopted general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. The text of the general comment is reproduced in annex III to the present report. Also at the eightieth session, the Committee decided that its next general comment would be devoted to a revision of general comment No. 13 (21) on article 14 of the Covenant. Mr. Kälin will be the rapporteur for this revised general comment.

J. Staff resources

32. The Committee has welcomed the launch of the Global Plan of Action for the Geneva-based human rights treaty bodies and the creation of the Petitions Team within the Office of the High Commissioner for Human Rights (OHCHR). It notes with satisfaction that a senior regular budget position for the team was approved by the General Assembly in December 2003, and that this position had been filled. It further appreciates the addition of another regular budget post to the team in April 2004. The Committee is confident that these additions will help to improve further the services provided to the Committee. It notes that measures have been taken to further reduce the backlog of communications; in addition, measures have been taken to process with the requisite urgency and expediency particular

categories of communications. The Committee further notes with satisfaction that the activities of follow-up officers appointed in 2002 and 2003 have assisted it and both the Special Rapporteur for follow-up on concluding observations and the Special Rapporteur for follow-up on Views in the discharge of their respective mandate.

K. Emoluments of the Committee

33. The Committee has noted with concern that the emoluments for its members provided for in article 35 of the Covenant have been reduced by General Assembly resolution 56/272 to the symbolic amount of US$ 1. It notes with regret that its letter addressed to the President of the fifty-eighth session of the General Assembly on this issue on 14 November 2003 was left unanswered. The Committee addressed further letters on the issue to the Secretary-General and the President of the General Assembly during the eighty-first session and decided to keep the matter under review.

L. Publicity for the work of the Committee

34. The Chairperson, accompanied by members of the Bureau, met with the press after each of the Committee's three sessions held during the reporting period. The Committee notes that with the exception of academic institutions (see paragraph 37 below), awareness of its activities still remains unsatisfactory and that publicity must be enhanced to reinforce the protection mechanisms under the Covenant.

35. In this context, the Committee notes with satisfaction that press releases summarizing the most important final decisions under the Optional Protocol were issued after the end of each session during the reporting period. This practice helps to publicize the Committee's decisions under the Optional Protocol. The Committee further welcomes the creation and continued development of an electronic listserve, through which its concluding observations on reports examined under article 40 of the Covenant and final decisions adopted under the Optional Protocol are disseminated (electronically) to an ever-increasing number of individuals and institutions.

M. Publications relating to the work of the Committee

36. The Committee welcomes the preparation of a revised Fact Sheet on its activities, published as Fact Sheet No. 15 (Rev.1) by OHCHR. It regrets that publication of volume 4 of the Selected Decisions under the Optional Protocol has been delayed and hopes that it will be released without further delay. It notes with appreciation that volume 5 has been prepared, and that work on volume 6 is progressing. The Committee welcomes the work plan drawn up by its secretariat, under which work on other volumes of the Selected Decisions has been scheduled with a view to bringing the publication of the Selected Decisions up to date by the end of 2005.

37. The Committee welcomes the information on publication of its decisions adopted under the Optional Protocol in various databases (see annex VII to the present report for a selection). It appreciates the growing interest in its work shown by universities and other institutions of higher learning. It also reiterates its previous recommendation that the treaty body database of the OHCHR web site (www.unhchr.ch) be equipped with adequate search functions.

N. Publication of Festschrift commemorating the twenty-fifth anniversary of the Committee's work

38. The Committee welcomes the publication of the collection of essays celebrating the twenty-fifth anniversary of the commencement of the Committee's work, edited by Committee member Nisuke Ando.

O. Future meetings of the Committee

39. At its eightieth session, the Committee confirmed the following schedule of future meetings in 2005: eighty-third session from 14 March to 1 April 2005; eighty-fourth session from 11 to 29 July 2005; eighty-fifth session from 17 October to 4 November 2005.

P. Adoption of the report

40. At its 2219th meeting, held on 29 July 2004, the Committee considered the draft of its twenty-eighth annual report, covering its activities at its seventy-ninth, eightieth and eighty-first sessions, held in 2003 and 2004. The report, as amended in the course of the discussion, was adopted unanimously. By virtue of its decision 1985/105 of 8 February 1985, the Economic and Social Council authorized the Secretary-General to transmit the Committee's annual report directly to the General Assembly.

Notes

[1] The Covenant continues to apply by succession in one other State, Kazakhstan (see note (d) to annex I below).

[2] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, chap. II, para. 56 and annex III, sect. B.

[3] Ibid., *Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex VI.

CHAPTER II. METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT AND COOPERATION WITH OTHER UNITED NATIONS BODIES

41. The present chapter summarizes and explains the modifications introduced by the Committee to its working methods under article 40 of the Covenant in recent years, as well as recent decisions adopted by the Committee on follow-up to its concluding observations on State party reports.

A. Recent developments and decisions on procedures

42. In March 1999, the Committee decided that the lists of issues for the examination of States parties' reports should henceforth be adopted at the session prior to the examination of the report, thereby allowing a period of at least two months for States parties to prepare for the discussion with the Committee. Central to the consideration of States parties' reports is the oral hearing, where the delegations of States parties have the opportunity to answer specific questions from Committee members. Thus, States parties are encouraged to use the list of issues to prepare better for the constructive dialogue with the Committee. While they are not required to submit written answers to the list of issues, they are encouraged to do so.

43. In October 1999, the Committee adopted new consolidated guidelines on State party reports, which replaced all previous guidelines and which are designed to facilitate the preparation of initial and periodic reports by States parties. The guidelines provide for comprehensive initial reports prepared on an article-by-article basis, and focused periodic reports geared primarily to the Committee's concluding observations on the previous report of the State party concerned. In their periodic reports, States parties need not report on every article of the Covenant, and should concentrate on those provisions identified by the Committee in its concluding observations and those articles in respect of which there have been significant developments since the submission of the previous report. The revised consolidated guidelines were issued as document CCPR/C/66/GUI/Rev.2 on 26 February 2001.[1]

44. For several years, the Committee has expressed concern about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant.[2] Two working groups of the Committee proposed amendments to the rules of procedure, which are aimed at helping States parties to fulfil their reporting obligations and designed to simplify the procedure. These amendments were formally adopted during the seventy-first session in March 2001, and the revised rules of procedure were issued as document CCPR/C/3/Rev.6 and Corr.1.[3] All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee recalls that general comment No. 30, adopted at the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.[4]

45. The amendments introduce procedures for dealing with situations of States parties that have failed to honour their reporting obligations for a long time, or that have chosen to request a postponement of their scheduled appearance before the Committee at short notice. In both

situations, the Committee may henceforth serve notice on the States concerned that it intends to examine, from material available to it, the measures adopted by that State party with a view to giving effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure further introduce a follow-up procedure to the concluding observations of the Committee: rather than fixing a set time limit for its next report in the last paragraph of the concluding observations, the State party will be requested to report back to the Committee within a specified period with responses to the Committee's recommendations, indicating what steps, if any, it has taken to give effect to the recommendations. Such responses will thereafter be examined by the Special Rapporteur for follow-up on concluding observations, and result in the determination of a definitive time limit for the presentation of the next report. Since the seventy-sixth session, the Committee has examined the progress reports submitted by the Special Rapporteur on a sessional basis.

46. The Committee first applied the new procedure to a non-reporting State at its seventy-fifth session. It examined the measures taken by the Gambia to give effect to the rights recognized in the Covenant without a report, and in the absence of a delegation from the State party. It adopted provisional concluding observations on the situation of civil and political rights in the Gambia, which were transmitted to the State party. At the seventy-eighth session, the Committee discussed the status of the provisional concluding observations on the Gambia and requested the State party to submit a periodic report by 1 July 2004 that should specifically address the concerns identified in the Committee's provisional concluding observations. Failure to submit such a report within the deadline set by the Committee would result in the conversion of the provisional concluding observations into final ones, and their general dissemination. On 8 August 2003, the Committee amended rule 69A of its rules of procedure to provide for the possibility of converting provisional concluding observations into final and public ones. At its seventy-ninth and eighty-first sessions the Committee examined the situation of civil and political rights in, respectively, Equatorial Guinea and the Central African Republic, in the absence both of a report and a delegation in the first case, and the absence of a report but the presence of a delegation in the second case. Provisional concluding observations were transmitted to the States parties concerned. At the end of the eighty-first session, the Committee decided to convert the provisional concluding observations on the country situations of the Gambia and Equatorial Guinea into final and public ones. At its seventy-fourth session, the Committee adopted decisions which spell out the modalities for following up on concluding observations.[5] At the seventy-fifth session, the Committee designated Mr. Yalden as its Special Rapporteur for follow-up on concluding observations.

47. Also at the seventy-fourth session, the Committee adopted a number of decisions on working methods designed to streamline the procedure for the examination of reports under article 40.[6] The principal innovation consists in the establishment of country report task forces, consisting of no fewer than four and no more than six Committee members, who will have the main responsibility for the conduct of debates on a State party report. The Committee hopes that the establishment of these country report task forces will enhance the quality of the dialogue with delegations during the examination of State party reports. The first country report task forces were convened during the seventy-fifth session.

B. Concluding observations

48. Since its forty-fourth session in March 1992[7] the Committee has adopted concluding observations. It takes concluding observations as a starting point in the preparation of the list of issues for the examination of the subsequent State party report. In some cases, the Committee has received comments on its concluding observations and replies to the concerns identified by the Committee under rule 70, paragraph 5, of its rules of procedure from the States parties concerned, which are issued in document form. During the period under review such comments and replies were received from Egypt, Estonia, Luxembourg, Slovakia, Sweden, Togo, Uganda and Uzbekistan. These State party replies have been issued as documents and are available from the Committee's secretariat, or may be consulted on the OHCHR web site (www.unhchr.ch, treaty body database, documents, category "concluding observations"). Chapter VII of the present report summarizes activities relating to follow-up to concluding observations and States parties' replies.

C. Links to other human rights treaties and treaty bodies

49. The Committee views the annual meeting of persons chairing the human rights treaty bodies as a forum for the exchange of ideas and information on procedures and logistical problems, streamlining of working methods, improved cooperation among treaty bodies, and the necessity of obtaining adequate secretariat services to enable all treaty bodies to fulfil their mandates effectively.

50. The sixteenth meeting of treaty body chairpersons was convened in Geneva from 23 to 25 June 2004. The Committee was represented by the Chairperson, Mr. Amor. The chairpersons met with, among others, the Bureau of the Commission on Human Rights, special rapporteurs, independent experts and chairpersons of working groups of the Commission on Human Rights, and representatives of States parties to the seven main United Nations human rights instruments. They discussed the outcome of the third inter-committee meeting (see paragraphs 21 and 22 above) and adopted recommendations relating to the issue of treaty body reform and the Secretary-General's proposals (see chap. I, sect. F).

51. The third inter-committee meeting was held in Geneva on 21 and 22 June 2004. It brought together representatives from each of the human rights treaty bodies. The Committee was represented by Mr. Amor, Mr. Rivas Posada and Mr. Yalden. Discussions focused on the Secretary-General's proposals for treaty body reform and the treaty bodies' reactions to those proposals.

D. Cooperation with other United Nations bodies

52. In 1999, the Committee considered its participation in the initiative emerging from the memorandum of understanding signed by OHCHR and UNDP on cooperation over a wide range of human rights issues and activities. The Committee welcomed the fact that, in its development programmes and, in particular, those relating to technical assistance, UNDP takes account of the Committee's conclusions arising from its consideration of State party reports.

Notes

[1] The *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex III, sect. A.

[2] See ibid., chap. III, sect. B and *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), chap. III, sect. B.

[3] See ibid., *Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex III, sect. B.

[4] See ibid., *Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, annex VI.

[5] See ibid., vol. I, annex II, sect. A.

[6] See ibid., vol. I, annex III, sect. B.

[7] See ibid., *Forty-seventh Session, Supplement No. 40* (A/47/40), chap. I, sect. E, para. 18.

CHAPTER III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

53. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. In connection with this provision, article 40, paragraph 1, of the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. States parties undertake to submit reports within one year of the entry into force of the Covenant for the State party concerned and, thereafter, whenever the Committee so requests. Under the Committee's current guidelines, adopted at the sixty-sixth session and amended at its seventieth session (CCPR/C/GUI/66/Rev.2), the five-year periodicity in reporting, which the Committee itself had established at its thirteenth session in July 1981 (CCPR/C/19/Rev.1), was replaced by a flexible system whereby the date for the subsequent periodic report by a State party is set on a case-by-case basis at the end of the Committee's concluding observations on any report, in accordance with article 40 of the Covenant and in the light of the guidelines for reporting and the working methods of the Committee.

A. Reports submitted to the Secretary-General from August 2003 to July 2004

54. During the period covered by the present report, 13 reports under article 40 were submitted to the Secretary-General by the following States parties: Albania (initial); Benin (initial); Greece (initial); Italy (fifth periodic); Morocco (fifth periodic); Namibia (initial); Paraguay (second periodic); Poland (fifth periodic); Syrian Arab Republic (third periodic); Tajikistan (initial), Thailand (initial); Uzbekistan (second periodic); and Yemen (fourth periodic).

B. Overdue reports and non-compliance by States parties with their obligations under article 40

55. States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

56. The Committee is faced with a problem of overdue reports, notwithstanding the Committee's revised reporting guidelines and other significant improvements in its working methods. The Committee has agreed that more than one periodic report submitted by a State party may be considered jointly. Under the Committee's reporting guidelines, the date for the submission of the next periodic report is stated in the concluding observations.

57. The Committee notes with concern that the failure of States parties to submit reports hinders the Committee in the performance of its monitoring functions under article 40 of the Covenant. The list below identifies the States parties that have a report more than five years overdue, as well as those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that these States are in default of their obligations under article 40 of the Covenant.

States parties that have reports more than five years overdue (as at 31 July 2004) or that have not submitted a report requested by a special decision of the Committee

State party	Type of report	Date due	Years overdue
Gambia	Second	21 June 1985	19
Kenya	Second	11 April 1986	18
Equatorial Guinea	Initial	24 December 1988	15
Central African Republic	Second	9 April 1989	15
Barbados	Third	11 April 1991	13
Somalia	Initial	23 April 1991	13
Nicaragua	Third	11 June 1991	13
Democratic Republic of the Congo	Third	31 July 1991	13
Saint Vincent and the Grenadines	Second	31 October 1991	12
San Marino	Second	17 January 1992	12
Panama	Third	31 March 1992	12
Rwanda	Third	10 April 1992	12
Madagascar	Third	31 July 1992	12
Grenada	Initial	5 December 1992	11
Bosnia and Herzegovina	Initial	5 March 1993	11
Côte d'Ivoire	Initial	25 June 1993	11
Seychelles	Initial	4 August 1993	10
Angola	Initial/Special	31 January 1994	10
Niger	Second	31 March 1994	10
Afghanistan	Third	23 April 1994	10
Ethiopia	Initial	10 September 1994	9
Dominica	Initial	16 September 1994	9
Guinea	Third	30 September 1994	9
Mozambique	Initial	20 October 1994	9
Cape Verde	Initial	5 November 1994	9
Bulgaria	Third	31 December 1994	9
Islamic Republic of Iran	Third	31 December 1994	9
Malawi	Initial	21 March 1995	9
Burundi	Second	8 August 1996	7
Chad	Initial	8 September 1996	7
Haiti	Initial	30 December 1996	7
Jordan	Fourth	27 January 1997	7
Malta	Initial	12 December 1996	7
Slovenia	Second	24 June 1997	7
Belize	Initial	9 September 1997	6

State party	Type of report	Date due	Years overdue
Brazil	Second	23 April 1998	6
Mauritius	Fourth	30 June 1998	6
Nepal	Second	13 August 1997	6
Tunisia	Fifth	4 February 1998	6
Turkmenistan	Initial	31 July 1998	6
Zambia	Third	30 June 1998	6
United States of America	Second	7 September 1998	5
Honduras	Initial	24 November 1998	5
Romania	Fifth	28 April 1999	5
Spain	Fifth	28 April 1999	5

58. The Committee once again draws particular attention to 28 initial reports which have not yet been presented (including the 18 overdue initial reports listed above). The result is to frustrate a major objective of the Covenant, which is to enable the Committee to monitor compliance by States parties with their obligations under the Covenant, on the basis of States parties' reports. The Committee addresses reminders at regular intervals to all those States parties whose reports are significantly overdue.

59. On 27 July 2004, during its eighty-first session, the Committee addressed a letter to the United States of America, requesting it to submit its overdue second and third periodic reports by 31 December 2004 and/or to submit specific information on the effect of measures taken to fight against terrorism after the events of 11 September 2001 and notably the implications of the Patriot Act on nationals as well as on non-nationals (articles 13, 17, 18 and 19 of the Covenant), as well as on problems relating to the legal status and treatment of persons detained in Afghanistan, Guantánamo Bay, Iraq and other places of detention outside the territory of the United States of America (articles 7, 9, 10 and 14 of the Covenant).

60. With respect to the circumstances that are set out in chapter II, paragraphs 45 and 46, the amended rules of procedure now enable the Committee to consider the compliance by States parties that have failed to submit reports under article 40, or that have requested a postponement of their scheduled appearance before the Committee.

61. At its 1860th meeting, on 24 July 2000, the Committee decided to request Kazakhstan to present its initial report by 31 July 2001, notwithstanding the fact that no instrument of succession or accession has been received from Kazakhstan following its independence. By the time of the adoption of the present report, the initial report of Kazakhstan had still not been received. The Committee once again invites the Government of Kazakhstan to submit its initial report under article 40 at its earliest convenience. In this context, it welcomes the signature of the Covenant by Kazakhstan on 17 November 2003.

CHAPTER IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

62. The following sections, arranged on a country-by-country basis in the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its seventy-ninth, eightieth and eighty-first sessions. The Committee urges those States parties to adopt corrective measures, where indicated, consistent with their obligations under the Covenant and to implement these recommendations.

A. Concluding observations on State reports examined during the reporting period

63. Philippines

(1) The Human Rights Committee considered the consolidated second and third periodic reports of the Philippines (CCPR/C/PHL/2002/2) at its 2138th, 2139th and 2140th meetings, held on 20 and 21 October 2003 (see CCPR/C/SR.2138, 2139 and 2140). It adopted the following concluding observations at its 2153rd and 2154th meetings (CCPR/C/SR.2153 and 2154), held on 30 October 2003.

Introduction

(2) The Committee notes the submission of the consolidated second and third periodic reports of the Philippines, which contain detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 14 years. The Committee considers that the failure to submit a report for such a long period constitutes a failure to observe its obligation under article 40 of the Covenant.

(3) The Committee welcomes the information provided in the report. While appreciating the delegation's comments on a series of questions posed orally by members of the Committee, it regrets that an extensive number of questions remained wholly or partly unanswered at the conclusion of the discussion. Some additional written material received on 24 October 2003 was taken into account by the Committee.

Positive aspects

(4) The Committee appreciates the progress made by the State party to reform its domestic legal order to comply with its commitments under the Covenant. It welcomes, among other actions, the ratification of the Optional Protocol to the Covenant in August 1989. The Committee considers that the process of reform should be accelerated and strengthened.

(5) The Committee notes with satisfaction that the State party has facilitated international assistance in relation to education and training on the protection of human rights.

Principal subjects of concern and recommendations

(6) The Committee notes the absence of information regarding the status in domestic law of the Covenant and on whether any Covenant provisions have been invoked in court proceedings to date.

> **The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations subscribed to under the Covenant.**

(7) The Committee regrets the lack of information on the procedure for the implementation of the Committee's Views under the Optional Protocol. In particular, it is concerned by the grave breaches by the State party of its obligations constituted by its lack of compliance with the Committee's requests for interim measures of protection in cases submitted under the Optional Protocol (*Piandiong, Morallos and Bulan v. The Philippines*).

> **The State party should establish procedures to implement Views of the Committee and to ensure compliance with requests for interim measures of protection.**

(8) The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated.

> **(a) The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 6 and 9 of the Covenant, and ensure effective enforcement of the legislation.**
>
> **(b) The State party should provide information on the outcome of the proceedings related to the cases of Eden Marcellana and Eddie Gumanoy and the execution of 11 persons on Commonwealth Avenue, Manila, in 1995.**

(9) The Committee has noted pending legislation related to terrorism awaiting adoption by the Congress of the Philippines. While the Committee is mindful of the security requirements associated with efforts to combat terrorism, it is concerned by the exceedingly broad scope of the proposed legislation, as acknowledged by the delegation. The draft legislation includes a broad and vague definition of acts of terrorism which could have a negative impact on the rights guaranteed by the Covenant.

> **The State party should ensure that legislation adopted and measures taken to combat terrorism are consistent with the provisions of the Covenant.**

(10) The Committee notes the current partial moratorium on execution of death sentences (while drug-related crimes are excluded from this moratorium), but it remains concerned by the adoption of legislation providing for the death penalty after article 3, section 19 (1), of the

Constitution of the Philippines had prohibited the imposition of the death penalty. In any event, the Committee has noted that the death penalty is mandatory for a number of crimes and extends to an excessive number of offences which do not fit the definition of the "most serious" crimes within the meaning of article 6, paragraph 2, of the Covenant. The Committee notes that the death penalty is prohibited for persons under 18 years of age, but is concerned that minors have been sentenced to death, seven of whom are currently detained on death row.

> **The Committee urges the State party to take measures to repeal all laws which have made it possible to impose the death penalty and to accede to the Second Optional Protocol to the Covenant. It should also ensure compliance with article 6, paragraph 5, of the Covenant prohibiting the imposition of the death sentence for crimes committed by persons below 18 years of age.**

(11) The Committee expresses concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted. Such a situation is conducive to perpetration of further violations of human rights and to a culture of impunity.

> **The State party should adopt and enforce legislative and other measures to prevent such violations, in keeping with articles 6 and 9 of the Covenant and to improve the implementation of relevant laws. The State party should conduct prompt and impartial investigations, and prosecute and punish the perpetrators.**

(12) The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant. The Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.

> **The State party should institute an effective system of monitoring treatment of all detainees, to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should ensure that all allegations of torture are effectively and promptly investigated by an independent authority, that those found responsible are prosecuted, and that victims are given adequate compensation. Free access to legal counsel and a doctor should be guaranteed in practice, immediately after arrest and during all stages of detention. All allegations that statements of detainees have been obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture, and the burden of proof, in such cases, should not be borne by the alleged victim.**

(13) The Committee notes with concern numerous instances of trafficking (art. 8) of women and children in the Philippines, both within the country and across its borders. While noting the importance of existing legislation (R.A. 9208) in this domain, it is concerned that insufficient measures have been taken actively to prevent trafficking and to provide assistance and support to the victims.

The State party should take appropriate measures to combat trafficking in all its forms, by ensuring effective enforcement of the relevant legislation and imposing sanctions on those found responsible. The Committee encourages the State party to ensure gender-specific training to sensitize the officials involved with problems faced by victims of trafficking, in accordance with articles 3, 8 and 26 of the Covenant.

(14) The Committee is concerned that the law allowing for warrantless arrest is open to abuse, in that arrests in practice do not always respect the statutory conditions that the person arrested is actually committing a crime or that the arresting officer has "personal" knowledge of facts indicating that the person arrested committed the crime. The Committee is also concerned that a vaguely worded anti-vagrancy law is used to arrest persons without warrant, especially female prostitutes and street children.

The State party should ensure that its laws and practices with regard to arrest are brought into full conformity with article 9 of the Covenant.

(15) The Committee is concerned at continuing reports of displacement of persons and evacuation of populations, including indigenous population groups, in areas of counter-insurgency operations.

The State party should take urgent measures to ensure the protection of civilians in areas affected by military operations, in accordance with its human rights obligations.

(16) The Committee welcomes the adoption of the Indigenous Peoples' Rights Act (IPRA) in 1997 and the subsequent establishment of the National Commission on Indigenous Peoples (NCIP), but remains concerned about the lack of effective implementation of the legislation. The Committee welcomes the positive measures noted by the delegation, but considers their scope to be limited. It is further concerned at the human rights implications for indigenous groups of economic activities, such as mining operations.

The State party should ensure effective enforcement of the above legislation and ensure that indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage, and that the capacity of the National Commission on Indigenous Peoples is strengthened. Positive measures should be expanded to include land rights issues.

(17) The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:

(a) The absence of adequate legislation governing juvenile justice and the deplorable situation of children in detention, including those held without evidence for prolonged periods of time;

(b) Persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art. 7);

(c) Street children vulnerable to extrajudicial executions and various forms of abuse and exploitation;

(d) Children as young as 13 allegedly being used by armed groups without adequate measures of protection by the State (art. 24);

(e) Economic exploitation of children, in particular in the informal sector.

The State party should:

(a) Expedite the adoption of legislation governing juvenile justice which complies with international standards of juvenile justice in accordance with article 10, paragraph 3, of the Covenant. The Committee recommends that training for professionals in the area of administration of juvenile justice be enhanced and that human and financial resources for effective implementation of the new legislation be secured;

(b) Devise programmes for street children which offer support and assistance. Support to relevant non-governmental organizations is encouraged in this respect;

(c) Take all appropriate measures to ensure protection of children who have been involved in armed conflict and provide them with adequate assistance and counselling for their rehabilitation and reintegration into society (art. 24); and

(d) In relation to child labour, the State party should pay particular attention to the situation concerning the monitoring and effective implementation of labour standards for street children and children working in the informal sector, as well as those working in the Free Trade Zone.

(18) While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (arts. 3 and 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.

Dissemination of information about the Covenant (art. 2)

(19) Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fourth periodic report should be prepared in accordance with those guidelines and submitted by 1 November 2006. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's consolidated second and third periodic report and the present concluding observations be published and widely disseminated throughout the country.

(20) In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 10, 11 and 14. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

64. Russian Federation

(1) The Committee considered the fifth periodic report of the Russian Federation (CCPR/C/RUS/2002/5) at its 2144th, 2145th and 2146th meetings, held on 24 and 25 October 2003 (see CCPR/C/SR.2144, 2145 and 2146) and adopted the following concluding observations at its 2159th and 2160th meetings (CCPR/C/SR.2159 and 2160), held on 4 November 2003.

Introduction

(2) The Committee welcomes the fifth periodic report of the Russian Federation, prepared in conformity with the reporting guidelines. The Committee regrets, however, that the report did not include full information on follow-up given to its previous concluding observations. The Committee also regrets the delay of almost four years in the submission of the report and the subsequent last-minute postponement of the consideration of the report, which had initially been scheduled for the seventy-eighth session in July 2003.

(3) The Committee expresses its appreciation for the discussion in some depth with a high-level delegation, comprising senior officials from various ministries and government institutions and relevant areas of expertise. For the most part the replies given were frank and constructive.

Positive factors

(4) The Committee notes with appreciation numerous legislative developments and efforts to strengthen the judiciary since the submission of the fourth periodic report, which have further improved the protection of Covenant rights.

(5) The Committee notes the information given by the delegation about a decision of the Plenum of the Supreme Court of 10 October 2003 instructing general courts in their obligation to be guided by relevant international treaties, including human rights treaties.

(6) The Committee welcomes the Federal Constitutional Law No. 1 of 26 January 1997, which creates the institution and sets out the functions and responsibilities of the Federal Commissioner for Human Rights, in line with the Committee's previous recommendations. It also notes the election of the first Federal Commissioner in May 1998.

(7) The Committee welcomes the notable achievements in addressing the problem of overcrowding in prisons through increasing resort to alternative forms of punishment, amnesties and reduced use of pre-trial detention.

Principal subjects of concern and recommendations

(8) The Committee is concerned that the State party has not implemented the Committee's Views under the Optional Protocol in the cases of *Gridin v. Russian Federation* and *Lantsov v. Russian Federation*. While noting the delegation's explanation that the decision not to follow the Views of the Committee regarding the release of Mr. Gridin was based on a careful study by the Supreme Court and Procurator's Office, the Committee expresses its concern that a failure to give effect to its Views would call into question the State party's commitment to the Optional Protocol.

> **The Committee urges the State party to review its position in relation to Views adopted by the Committee under the Optional Protocol and to implement the Views, in order to comply with article 2, paragraph 3, of the Covenant which guarantees a right to an effective remedy when there has been a violation of the Covenant.**

(9) The Committee reiterates its concern regarding persistent inequality in the enjoyment of Covenant rights by women. In particular, the Committee notes with concern the high level of poverty among women, the prevalence of domestic violence against women, and a marked difference in the wages of men and women for equal work.

> **The State party should ensure that effective measures are taken to improve the situation of women as to their full enjoyment of Covenant rights (art. 3).**

(10) The Committee is concerned about the large number of persons in the State party who are being trafficked for sexual and labour exploitation, mainly to destinations outside the borders of the State party. In this context, the Committee notes that the State party has given increasing attention to the problem in recent years. In particular, the Committee notes that anti-trafficking legislation has been drafted and that the State party is working towards the ratification of relevant United Nations treaties in this field.

> **The State party should reinforce measures to prevent and combat trafficking in women through, inter alia, enacting legislation penalizing such practices and providing protection and support, including rehabilitation programmes, for the victims (art. 8).**

(11) The Committee notes that the death penalty was abolished de facto by Presidential decree of 16 May 1996, entitled "Phasing out of the death penalty in connection with Russia's entry into the Council of Europe". The Committee also notes that the State party envisages legislation to

abolish the death penalty. It is concerned, however, that the current moratorium will automatically end once the jury system has been introduced in all constituent entities of the State party, scheduled to be completed in 2007.

> **The State party should abolish the death penalty de jure before the expiration of the moratorium (art. 6) and accede to the Second Optional Protocol.**

(12) While the Committee notes that a number of measures have been taken to prevent the use of excessive force and torture by law enforcement personnel during the process of questioning, it remains concerned that suspects and detainees are not sufficiently protected under current legislation. The Committee is concerned at the reported occurrence of torture or ill-treatment, especially during informal interrogations in police stations when the presence of a lawyer is not required.

> **The State party should ensure that law enforcement officials are prosecuted for acts contrary to article 7 of the Covenant, and that the charges correspond to the seriousness of the acts committed. The State party should ensure the implementation of existing applicable legislation, as well as the Covenant, through further professional training of law enforcement personnel on the rights of suspects and detainees.**

(13) The Committee remains deeply concerned about continuing substantiated reports of human rights violations in the Republic of Chechnya, including extrajudicial killings, disappearances and torture, including rape. The Committee notes that some 54 police and military personnel have been prosecuted for crimes committed against civilians in Chechnya, but remains concerned that the charges and sentences handed down do not appear to correspond with the gravity of the acts as human rights violations. The Committee is also concerned that investigations into a number of large-scale abuses and killings of civilians in 1999 and 2000, in the locations of Alkhan Yurt, Novye Aldy and Staropromyslovskii district of Grozny, have still not been brought to a conclusion. The Committee acknowledges that abuse of and violations against civilians also involve non-State actors, but reiterates that this does not relieve the State party of its obligations under the Covenant. In this regard, the Committee is concerned about the provision in the Federal Law "On Combating Terrorism" which exempts law enforcement and military personnel from liability for harm caused during counter-terrorist operations.

> **The State party should ensure that operations in the Republic of Chechnya are carried out in compliance with its international human rights obligations. The State party should ensure that abuse and violations are not committed with impunity de jure or de facto, including violations committed by military and law enforcement personnel during counter-terrorist operations. All cases of extrajudicial executions, enforced disappearances and torture, including rape, should be investigated, their perpetrators prosecuted and victims or their families compensated (arts. 2, 6, 7 and 9).**

(14) While acknowledging the serious nature of the hostage-taking situation, the Committee cannot but be concerned at the outcome of the rescue operation in the Dubrovka theatre in Moscow on 26 October 2002. The Committee notes that various attempts to investigate the

situation are still under way but expresses its concern that there has been no independent and impartial assessment of the circumstances, regarding medical care of the hostages after their liberation and the killing of the hostage-takers.

> **The State party should ensure that the circumstances of the rescue operation in the Dubrovka theatre are subject to an independent, in-depth investigation, the results of which are made public, and, if appropriate, prosecutions are initiated and compensation paid to the victims and their families.**

(15) The Committee welcomes the marked improvement registered since the consideration of the previous report with regard to overcrowding in prisons and the scheduled further reduction of the number of prisoners by more than 150,000. However, it was not clear whether all serious overcrowding in all places of detention had been resolved. The Committee remains concerned about reports of poor hygiene and violence by prison officers in some places of detention.

> **The State party should continue to reinforce efforts to reform the prison system to meet the requirements of article 10 of the Covenant. The State party should ensure that the problem of overcrowding is completely eliminated and that prisoners' complaints concerning violations of their rights are promptly and thoroughly investigated. Moreover, the Committee encourages the adoption of the draft federal law "On public control over ensuring human rights in places of forced detention and assistance of public associations in their activities", adopted in first reading by the State Duma in September 2003, which would allow for independent oversight of prison conditions.**

(16) The Committee notes the statement by the delegation that all persons who have returned to Chechnya have done so voluntarily. However, it also observes that there are reports of undue pressure on displaced persons living in camps in Ingushetia to make them return to Chechnya.

> **The State party should ensure that internally displaced persons in Ingushetia are not coerced into returning to Chechnya, including by ensuring the provision of alternative shelter in case of closure of camps (art. 12).**

(17) While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions.

> **The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant.**

(18) The Committee notes with concern the closure in recent years of a number of independent media companies and an increase in State control of major media outlets (TV channels, radio stations and newspapers), either directly or indirectly through State-owned corporations, such as the State-run company Gazprom, which took over the independent nationwide television network NTV in 2001.

The State party is invited to protect media pluralism and avoid State monopolization of mass media, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant.

(19) The Committee is concerned that the proposed amendments to the law "On Mass Media" and the law "On Combating Terrorism", adopted by the State Duma in 2001 in the aftermath of the events of 11 September 2001, are incompatible with article 19 of the Covenant. It notes with satisfaction that the President of the Russian Federation vetoed the amendments in November 2002.

The State party should ensure that the above-mentioned amendments, which were put in abeyance in November 2002, but are due to be debated again by a parliamentary commission, are brought into conformity with the State party's obligations under the Covenant.

(20) While welcoming the State party's efforts to ban and prosecute groups propagating racist and xenophobic views, the Committee expresses its concern that the definition of "extremist activity" in the federal law of July 2002 "On Combating Extremist Activities" is too vague to protect individuals and associations against arbitrariness in its application.

The State party is encouraged to revise the above law with a view to making the definition of "extremist activity" more precise, to exclude any possibility of arbitrary application and to give notice to persons concerned regarding actions for which they will be held criminally liable (arts. 15 and 19 to 22).

(21) The Committee is concerned that journalists, researchers and environmental activists have been tried and convicted on treason charges, essentially for having disseminated information of legitimate public interest, and that in some cases where the charges were not proven, the courts have referred the matter back to prosecutors instead of dismissing the charges.

The State party should ensure that no one is subjected to criminal charges or conviction for carrying out legitimate journalistic or investigative scientific work, within the terms covered by article 19 of the Covenant.

(22) The Committee expresses its concern at the high incidence of harassment, violent attacks and murders of journalists in the State party.

The State party should ensure that all cases of threats against and violent assault and murder of journalists are promptly and thoroughly investigated and that those found responsible are brought to justice (arts. 19 and 6).

(23) While acknowledging the difficult circumstances under which presidential elections were held in the Republic of Chechnya on 5 October 2003, the Committee expresses concern at reports that these elections did not meet all the requirements of article 25 of the Covenant.

The State party should ensure full compliance with article 25 in its efforts to restore the rule of law and political legitimacy in the Republic of Chechnya.

(24) The Committee is concerned at the increase of racially motivated violent attacks against ethnic and religious minorities, as well as about reports of racial profiling by law enforcement personnel. It notes with concern reports of xenophobic statements made by public officials.

> **The State party should take effective measures to combat racially motivated crimes. It should ensure that law enforcement personnel receive clear instructions and proper training with a view to protecting minorities against harassment. The State party is also encouraged to introduce specific legislation to criminalize racist acts as well as racially motivated statements made by those in public office (arts. 2, 20 and 26).**

(25) The Committee is concerned about the long delay in the processing of asylum claims, in particular in Moscow and the surrounding region, where asylum-seekers may have to wait for more than two years before being able formally to initiate the application procedure. It is also concerned that the Migration Service in Moscow reportedly has not allowed unaccompanied children to lodge asylum claims unless they have a legal guardian.

> **The State party should ensure timely access of asylum-seekers to the refugee status determination procedure, in particular in Moscow and its region, as well as proper documentation of asylum-seekers throughout the procedure, including the appeal stage. The State party should ensure that the relevant authorities appoint a legal guardian for unaccompanied children seeking asylum (arts. 13 and 24).**

(26) The State party should disseminate widely the text of its fifth periodic report and the present concluding observations. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs 11 and 13 above. The sixth periodic report should be submitted by 1 November 2007.

65. **Latvia**

(1) The Committee examined the second periodic report submitted by Latvia (CCPR/C/LVA/2002/2) at its 2150th to 2152nd meetings, held on 28 and 29 October 2003, and adopted the following concluding observations at its 2162nd meeting, held on 5 November 2003.

Introduction

(2) The Committee has examined the detailed and comprehensive report of Latvia. The Committee regrets the delay of over four years in the submission of the report. The Committee is grateful to the delegation of Latvia for providing a substantive amount of information about the implementation of the Covenant in Latvia. Some additional written material received on 3 November 2003 was taken into account by the Committee.

Positive aspects

(3) The Committee welcomes the consistent references to the previous concluding observations in the second periodic report. It further welcomes the publication in the *Official Gazette* and the *Latvian Human Rights Quarterly* of the initial report to the Committee,

its recommendations and the debate. It welcomes the publication of the Committee's Views in cases concerning Latvia in the *Official Gazette*. The Committee welcomes the readiness of the State party to implement its Views.

(4) The Committee welcomes the significant progress in legislative and institutional reform since the review of the first periodic report in 1995, in particular the inclusion in the Constitution of chapter VIII on fundamental human rights, as well as the establishment of a Constitutional Court and the introduction of the right of individuals to launch a constitutional complaint. The Committee notes with great interest the rulings by the Constitutional Court removing from the national legal system norms conflicting with international human rights standards. Other positive legislative reforms include in particular the adoption and entry into force of a new Asylum Law, dealing with the question of non-refoulement; the labour law; amendments to the election law, removing the language requirement to stand for election and to legislation on trafficking in human beings. The Committee also welcomes the creation of the National Programme for Integration of Society in Latvia and the Society Integration Fund.

(5) The Committee welcomes the establishment of the National Human Rights Office and particularly its use of the mandate to submit complaints to the Constitutional Court.

(6) The Committee welcomes amendments to national legislation to harmonize it with the provisions of the Second Optional Protocol. It encourages the State party to accede to the Second Optional Protocol.

Principal subjects of concern and recommendations

(7) The Committee is concerned about allegations of ill-treatment of persons by police officers, as well as the lack of statistical data on the number, details and outcome of cases of ill-treatment by police officers. Although it notes that, as of 2003, statistics on physical ill-treatment by police officers are being systematized (art. 7).

> **The State party should take firm measures to eradicate all forms of police ill-treatment, including prompt investigations, prosecution of perpetrators and the provision of effective remedies to the victims.**

(8) The Committee is concerned that no independent oversight mechanism exists for investigating complaints of criminal conduct against members of the police, which could contribute to impunity for police officers involved in human rights violations (arts. 2, 7 and 9).

> **The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuse of power by the police.**

(9) While welcoming the entry into force of the new asylum law, the Committee remains concerned at the short time limits, in particular for the submission of an appeal under the accelerated asylum procedure, which raises concerns regarding the availability of an effective remedy in cases of refoulement (arts. 6, 7 and 2, para. 3).

> **The State party should ensure that the time limits under the accelerated asylum procedure are extended, in particular for the submission of an appeal.**

(10) While acknowledging the State party's admission that the average length of pre-trial detention is unsatisfactory and its attempt to remedy the situation in the proposed code of criminal procedure, the Committee is concerned about the length of pre-trial detention, which is often incompatible with articles 9, paragraph 3, and 14. While being aware of the draft criminal procedure law intended, inter alia, to speed up trials, the Committee remains concerned at the length and frequency of pre-trial detention, particularly with regard to juvenile offenders.

The State party should take all legislative and administrative measures to ensure compliance with articles 9, paragraph 3, and 14 as a matter of priority.

(11) The Committee notes the information provided by the delegation regarding the improvement of the situation of overcrowding in prisons, as well as measures envisaged by the State party to increase use of alternative forms of punishment. However, in view of reports that overcrowding in prisons continues to be a concern, the Committee should be provided with specific information to indicate to what extent overcrowding in prisons is a problem (art. 10).

The State party should continue to take measures to address overcrowding in prisons and to ensure compliance with the requirements of article 10.

(12) The Committee notes the efforts made by the State party to address the situation regarding trafficking in persons, in particular by amending legislation, the adoption of a preventive strategy by providing information to potential victims, and through international cooperation. However, the Committee is concerned about the slow progress made in implementing those policies and notes that it has received only limited statistical information from the State party (arts. 3 and 8).

The State party should take measures to combat this practice, which constitutes a violation of several Covenant rights, including article 3 and the right under article 8 to be free from slavery and servitude. Strong measures should be taken to prevent trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are victims of this kind of trafficking so that they may have a place of refuge and an opportunity to give evidence against the persons responsible in criminal or civil proceedings. The Committee encourages the State party to continue its cooperative efforts with other States to eliminate trafficking across national borders. The Committee wishes to be informed of the measures taken and their result.

(13) While noting the efforts made by the State party to combat domestic violence, particularly in the area of legislative reform, the Committee regrets the lack of detailed information on the nature of the problem. The Committee is concerned at reports that domestic violence persists (arts. 3, 9 and 26).

The State party should adopt the necessary policy and legal framework to combat domestic violence, as envisaged, inter alia, by the draft programme on the implementation of gender equality. Furthermore, the Committee recommends that the State party establish crisis-centre hotlines and victim-support centres offering medical, psychological, legal and emotional support. In order to raise public awareness, it should disseminate information on this issue through the media.

(14) The Committee notes that discrimination against women with regard to remuneration persists, notwithstanding the measures taken by the Government to guarantee equal treatment, including through employment law and the programme on the implementation of gender equality. The Committee regrets that insufficient information was provided by the State party in regard to the number and results of cases brought and whether compensation has been paid (arts. 3 and 26).

The State party should take all necessary measures to ensure equal treatment of women and men in the public and private sectors, if necessary through appropriate positive measures, in order to give effect to its obligations under articles 3 and 26.

(15) The Committee notes with satisfaction that in 2002 a new law on alternative service entered into force, which provides for the right to conscientious objection. However, the Committee remains concerned that, pending a change in the conscription law, the duration of alternative service is up to twice that of military service and appears to be discriminatory (art. 18).

The State party should ensure that the alternative service is not of a discriminatory duration.

(16) While noting the measures taken by the State party to make the naturalization process more accessible and to increase the rate of naturalization of non-citizens, the Committee is concerned about the limited results of these policies, with many candidates not even initiating the procedure. The Committee takes note of the different reasons underlying this phenomenon, but considers that it has adverse consequences in terms of enjoyment of Covenant rights, and that the State party has a positive duty to ensure and protect those rights. Furthermore, the Committee is concerned at the possible obstacles posed by the requirement to pass a language examination.

The State party should further strengthen its efforts to effectively address the lack of applications for naturalization as well as possible obstacles posed by the requirement to pass a language examination, in order to ensure full compliance with article 2 of the Covenant.

(17) The Committee is concerned at the low level of registration as citizens of children born in Latvia after 21 August 1991, to non-citizen parents (art. 24).

The State party should take all necessary measures to further encourage registration of children as citizens.

(18) With regard to the status of non-citizens, the Committee notes the policy of the Government to further social integration through naturalization. However, the Committee is concerned about the large proportion of non-citizens in the State party, who by law are treated neither as foreigners nor as stateless persons but as a distinct category of persons with long-lasting and effective ties to Latvia, in many respects comparable to citizens but in other respects without the rights that come with full citizenship. The Committee expresses its concern over the perpetuation of a situation of exclusion, resulting in lack of effective enjoyment of many Covenant rights by the non-citizen segment of the population, including political rights, the

possibility to occupy certain State and public positions, the possibility to exercise certain professions in the private sector, restrictions in the area of ownership of agricultural land, as well as social benefits (art. 26).

> **The State party should prevent the perpetuation of a situation where a considerable part of the population is classified as "non-citizens". In the interim, the State party should facilitate the integration process by enabling non-citizens who are long-term residents of Latvia to participate in local elections and to limit the number of other restrictions on non-citizens in order to facilitate the participation of non-citizens in public life in Latvia.**

(19) The Committee is concerned about the impact of the State language policy on the full enjoyment of rights stipulated in the Covenant. Areas of concern include the possible negative impact of the requirement to communicate in Latvian except under limited conditions, on access of non-Latvian speakers to public institutions and communication with public authorities (art. 26).

> **The State party should take all necessary measures to prevent negative effects of its language policy on the rights of individuals under the Covenant, and, if required, adopt measures such as the further development of translation services.**

(20) While noting the explanation provided by the State party for the adoption of the Education Law of 1998, particularly the gradual transition to Latvian as the language of instruction, the Committee remains concerned about the impact of the current time limit on the move to Latvian as the language of instruction, in particular in secondary schools, on Russian-speakers and other minorities. Furthermore, the Committee is concerned about the distinction made in providing State support to private schools based on the language of instruction (arts. 26 and 27).

> **The State party should take all necessary measures to prevent negative effects on minorities of the transition to Latvian as the language of instruction. It should also ensure that if State subsidies are provided to private schools, they are provided in a non-discriminatory manner.**

(21) The Committee is concerned about the social and economic situation of the Roma minority and its impact on the full enjoyment of their rights under the Covenant, as well as the potentially negative effect on them of the present regulations regarding the entry of ethnic origin in passports and identity documents (arts. 2, 26 and 27).

> **The State party should take steps to remove obstacles to the practical enjoyment by the Roma of their rights under the Covenant, and, in particular, abolish the provisions allowing for entry of ethnic origin in passports and identity documents.**

(22) The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations.

(23) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding naturalization (para. 16), the status of non-citizens (para. 18), State language policy (para. 19) and the education law (para. 20). The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be presented by 1 November 2008.

66. Sri Lanka*

(1) The Human Rights Committee considered the combined fourth and fifth reports of Sri Lanka (CCPR/C/LKA/2002/4) during its 2156th and 2157th meetings, held on 31 October and 3 November 2003 (see CCPR/C/SR.2156 and 2157). It adopted the present concluding observations during its 2164th meeting (CCPR/C/SR.2164), held on 6 November 2003.

Introduction

(2) The Committee notes that the report was submitted after considerable delay and combines the fourth and fifth periodic reports of Sri Lanka. It notes that the report contains detailed information on domestic legislation and relevant national case law in the field of civil and political rights, but regrets that it does not provide full information on the follow-up to the Committee's concluding observations on Sri Lanka's previous report. The Committee expresses its appreciation for the discussion with the delegation, and notes the answers, both oral and written, that were provided to its questions.

Positive aspects

(3) The Committee welcomes the conclusion, on 24 February 2002, of a ceasefire agreement between the Government of Sri Lanka and the LTTE (Liberation Tigers of Tamil Eelam), and expresses the hope that the implementation and monitoring of the agreement will help to achieve a peaceful and lasting solution to a conflict which has given rise to serious violations of human rights on both sides.

(4) The Committee welcomes the establishment of the National Human Rights Commission in March 1997. It notes that the Commission has begun to play an active role in the area of promotion and protection of human rights in the peace process. It expresses the hope that the Commission's monitoring and educational activities, including those projected under the Strategic Plan for 2003-2006, will receive appropriate resources.

(5) The Committee notes the measures taken by the State party to improve awareness of human rights standards among public officials and members of the armed forces, and to facilitate the investigation of human rights violations. These measures include improved human rights education for all law enforcement officers, members of the armed forces and prison officers, the establishment of a central register of detainees in all parts of the country and the creation of the National Police Commission.

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* These concluding observations do not address events in Sri Lanka that occurred after the examination of the report.

(6) The Committee welcomes the State party's ratification of the Optional Protocol to the Covenant in October 1997, and the training workshop on the procedure under the Optional Protocol to the Covenant co-organized by the National Human Rights Commission and the United Nations Development Programme in December 2002.

Principal subjects of concern and recommendations

(7) While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in chapter III of the Constitution of Sri Lanka, even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16, paragraph 1, of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (arts. 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist.

> **The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant.**

(8) The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4, paragraph 1, of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13, paragraph 6, of the Constitution).

> **The State party should bring the provisions of chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.**

(9) The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a

number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished. The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (article 2 of the Covenant).

> **The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators. The National Police Commission complaints procedure should be implemented as soon as possible. The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection programme in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases. The capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened.**

(10) The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see paragraph 9 above), creates an environment that is conducive to a culture of impunity.

> **The State party is urged to implement fully the right to life and physical integrity of all persons (articles 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the United Nations Commission on Human Rights Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.**

(11) While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (art. 7).

> **The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.**

(12) The Committee is concerned that abortion remains a criminal offence under Sri Lankan law, except where it is performed to save the life of the mother. The Committee is also concerned by the high number of abortions in unsafe conditions, imperilling the life and health of the women concerned, in violation of articles 6 and 7 of the Covenant.

> **The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (article 7 and general comment No. 28), and repeal the provisions criminalizing abortion.**

(13) The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defence cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

> **The State party is urged to ensure that all legislation and other measures enacted taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.**

(14) The Committee is concerned about recurrent allegations of trafficking in the State party, especially of children (art. 8).

> **The State party should vigorously pursue its public policy to combat trafficking in children for exploitative employment and sexual exploitation, in particular through the effective implementation of all the components of the National Plan of Action adopted to give effect to this policy.**

(15) The Committee notes with concern that overcrowding remains a serious problem in many penitentiary institutions, with the inevitable adverse impact on conditions of detention in these facilities (art. 10).

> **The State party should pursue appropriate steps to reduce overcrowding in prisons, including through resorting to alternative forms of punishment. The National Human Rights Commission should be granted sufficient resources to allow it to monitor prison conditions effectively.**

(16) The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges.

The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.

(17) While appreciating the repeal of the statutory provisions relating to criminal defamation, the Committee notes with concern that State radio and television programmes still enjoy broader dissemination than privately owned stations, even though the Government has taken media-related initiatives, by repealing the laws that provide for State control of the media, by amending the National Security Act and by creating a Press Complaints Commission (art. 19).

The State party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant. The State party should take measures to ensure the impartiality of the Press Complaints Commission.

(18) The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices (arts. 7, 14 and 19).

The State party should take appropriate steps to prevent all cases of harassment of media personnel and journalists, and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted.

(19) While commending the introduction since 1995 of legislation designed to improve the condition of women, the Committee remains concerned about the contradiction between constitutional guarantees of fundamental rights and the continuing existence of certain aspects of personal laws discriminating against women, in regard to marriage, notably the age of marriage, divorce and devolution of property (arts. 3, 23, 24 and 26).

The State party should complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them into conformity with articles 3, 23, 24 and 26 of the Covenant.

(20) The Committee deplores the high incidence of violence against women, including domestic violence. It regrets that specific legislation to combat domestic violence still awaits adoption and notes with concern that marital rape is criminalized only in the case of judicial separation (art. 7).

The State party is urged to enact appropriate legislation in conformity with the Covenant without delay. It should criminalize marital rape in all circumstances. The State party is also urged to initiate awareness-raising campaigns about violence against women.

Dissemination of information about the Covenant (art. 2)

(21) The fifth periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GUI/Rev.1) and be submitted by 1 November 2007. The State party should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated throughout the country.

(22) In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 18. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

67. Colombia

(1) The Committee considered the fifth periodic report of Colombia (CCPR/C/COL/2002/5 and HRI/CORE/1/Add.56) at its 2167th and 2168th meetings, held on 15 and 16 March 2004, and adopted the following concluding observations at its 2183rd meeting, held on 25 March 2004.

Introduction

(2) The Committee welcomes the fifth periodic report submitted by the State party and is grateful for the detailed information provided during the consideration of the report concerning the implementation of the Covenant in Colombia. However, the Committee regrets that the report does not contain complete information on the implementation of the concluding observations made following consideration of the fourth periodic report of Colombia in 1997. Furthermore, the Committee regrets that the report was not prepared in conformity with the guidelines, in particular as regards its length and certain aspects of the information provided.

Factors and difficulties affecting the implementation of the Covenant

(3) The continuation of the internal armed conflict in Colombia remains a great hindrance to respect for and the protection of human rights in the State party. The Committee regrets to note that the human rights situation in Colombia has not improved.

Positive aspects

(4) The Committee takes note of the establishment (in 2000) of a Unit for Human Rights and International Humanitarian Law in the Ministry of Foreign Affairs, with important functions, such as that of following up on the international commitments assumed by the State party.

(5) The Committee welcomes the open invitation extended by the State party to all rapporteurs of the special mechanisms of the Commission on Human Rights. The Committee also welcomes the agreement between the State party and the United Nations High Commissioner for Human Rights to extend the presence of the High Commissioner's office in Colombia to October 2006.

(6) The Committee notes with satisfaction the efforts of the State party to maintain democratic institutions through free elections in 2002 and 2003.

Subjects of concern

(7) The Committee sees as a positive development the establishment of an internal mechanism to implement the decisions of international bodies such as the Human Rights Committee. However, the Committee notes that putting this mechanism into operation includes modalities that could hamper or delay the full implementation of the Committee's observations in respect of the Optional Protocol.

> **The State party should promote the expeditious and effective use of the machinery established under Act No. 288 of 1996 so as to ensure the full implementation without delay of the observations of the Human Rights Committee in respect of the Optional Protocol.**

(8) The Committee has taken note of the efforts by the State party to encourage members of illegal armed groups to lay down their arms and rejoin civil society. In this context, mention has been made of the so-called "alternative penalties bill", which seeks to offer certain legal benefits, such as the suspension of punishments involving imprisonment, to members of illegal armed groups who lay down their arms. The Committee is concerned that such benefits may be extended to persons responsible for war crimes or crimes against humanity.

> **The State party should ensure that the proposed legislation on alternative penalties does not grant impunity to persons who have committed war crimes or crimes against humanity (art. 2).**

(9) The Committee notes with concern that the so-called "anti-terrorist statute" (draft legislative act No. 223 of 2003) was adopted into Colombian law in December 2003. This law makes provision for granting to the armed forces the powers of judicial police, and also authorizes searches, administrative detention and other measures without a prior judicial order. It also places restrictions on the right to privacy and the right to apply for remedies. These provisions do not seem to be compatible with the guarantees set forth in the Covenant (arts. 9, 14 and 17).

> **The State party should ensure that, in the application of this law, no breaches of the guarantees laid down in the Covenant (arts. 2, 9, 14 and 17) occur.**

(10) The Committee expresses its concern with regard to draft legislative act No. 10 of 2002, which seeks to amend certain provisions of the Constitution dealing with the administration of justice. This draft legislation proposes modifications to *amparo* proceedings, rendering them inadmissible for reviews of certain judicial decisions. Furthermore, the draft proposes to eliminate constitutional controls on the declaration of states of emergency.

> **The State party should take into consideration the fact that some of the provisions of this draft legislation would be in clear contradiction with provisions of the Covenant, in particular articles 2, 4 and 14. If it were to be adopted, such fundamental remedies as *amparo* proceedings could be jeopardized.**

(11) The Committee is concerned about the fact that a significant number of arbitrary detentions, abductions, forced disappearances, cases of torture, extrajudicial executions and murders continue to occur in the State party. The Committee is also concerned that such practices as the arrest of election candidates continue, and that murders of legislators dating from earlier years remain unpunished. Human rights defenders, political and trade union leaders, judges and journalists continue to be targets of such actions. The abduction of presidential candidate Ingrid Betancourt in February 2002 continues to be of concern to the Committee, as do the other abductions. The Committee is also disturbed about the participation of agents of the State party in the commission of such acts, and the apparent impunity enjoyed by their perpetrators.

> **The State party should take immediate and effective steps to investigate these incidents, punish and dismiss those found responsible and compensate the victims, so as to ensure compliance with the guarantees set forth in articles 2 (3), 6, 7 and 9 of the Covenant.**

(12) The Committee also expresses its concern about links involving extensive violations of articles 6, 7 and 9 of the Covenant between elements of the armed forces and State security forces, on the one hand, and illegal paramilitary groups on the other.

> **The State party should take effective measures to terminate the links between elements of the security services and illegal paramilitary groups.**

(13) The Committee notes with concern that the criminalization of all abortions can lead to situations in which women are obliged to undergo high-risk clandestine abortions. It is especially concerned that women who have been victims of rape or incest or whose lives are in danger as a result of their pregnancy may be prosecuted for resorting to such measures (art. 6).

> **The State party should ensure that the legislation applicable to abortion is revised so that no criminal offences are involved in the cases described above.**

(14) The Committee reiterates its concern about the high levels of violence to which women are subjected. The Committee is particularly disturbed about the limited number of investigations into cases of domestic violence and sexual violence experienced by women during the internal armed conflict and by internally displaced women. The Committee also continues to be concerned about the current rules for prosecuting cases of rape, which require the consent of the victim in order to proceed further.

> **The State party should strengthen existing measures aimed at protecting women against all types of violence, especially domestic violence. Furthermore, it is recommended that the State party should periodically monitor the number of investigations and convictions for such crimes compared to the number of complaints received. The State party should also revise its legislation on investigations into cases of rape with respect to the role of consent of the victim in the proceedings (arts. 3, 7 and 26).**

(15) The Committee notes allegations that the Office of the Public Prosecutor has not pursued with appropriate diligence members of the armed forces and security forces suspected of perpetrating criminal violations of human rights, notably torture, enforced disappearances and summary and arbitrary executions (articles 6, 7 and 9, together with article 2).

The State party should ensure that these cases are investigated, whoever the alleged perpetrators may be, and guarantee to the victims the full exercise of the right to an effective remedy, as stipulated in article 2 of the Covenant.

(16) The Committee is concerned that military tribunals are continuing to investigate crimes committed by military personnel involving torture, enforced disappearances and summary and arbitrary executions, despite their previous ineffectiveness in solving such crimes and the decision of the Constitutional Court assigning jurisdiction over such crimes to the ordinary courts (articles 6, 7 and 9, together with article 2).

The State party should ensure that the ordinary courts investigate and adjudicate such crimes and that all elements of the armed forces cooperate in the proceedings in question. Individuals under investigation for such crimes should be suspended from active duty during the investigation and trial.

(17) The Committee notes with concern that the legislation of the State party does not allow conscientious objection to military service.

The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects (articles 18 and 26 of the Covenant).

(18) The Committee deplores information received regarding actions taken against human rights defenders, including intimidation and verbal and physical attacks originating at the highest political and military levels, as well as the interception of communications. Such acts constitute restrictions of their rights to freedom of expression and association.

The State party should halt such practices, and should also strengthen the protective measures that already exist in Presidential Directive 07 so that human rights defenders may fully enjoy the rights to freedom of expression and association recognized in articles 19 and 22 of the Covenant.

(19) Although the Committee has taken note of the information provided by the State party on the reduction in the number of internally displaced persons in 2002 and 2003, it remains concerned about the continued high number of displaced persons in Colombia and the lack of socio-economic assistance provided by the State party to these people, especially in fields such as the education of children and medical care. The Committee also expresses its concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote.

The State party should intensify programmes aimed at providing economic and social assistance to internally displaced persons so that they may, in conformity with article 26 of the Covenant, enjoy as many of the benefits provided by State institutions as possible. It should also take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25.

(20) The Committee expresses its concern about the continued discrimination against indigenous and minority communities. The Committee is also concerned about the lack of forums for consultation with representatives of the communities with regard to the distribution of land to the indigenous peoples. The Committee is also concerned about the lack of guarantees with respect to the exercise by the indigenous communities of the right to property, given the existence of projects to develop and exploit resources that could affect those communities.

> **The State party should guarantee the full enjoyment of the rights of persons belonging to minorities which are set out in the Covenant, in particular with respect to the distribution of land and natural resources, through effective consultations with representatives of the indigenous communities.**

(21) The State party should disseminate widely the text of its fifth periodic report and the present concluding observations. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within 12 months information on the implementation of the Committee's recommendations in paragraphs 10, 11 and 18 above. The Committee requests the State party to provide, in its next periodic report, due for presentation on 1 April 2008, information on the other recommendations made and on the implementation of the Covenant as a whole.

68. Germany

(1) The Committee considered the fifth periodic report of Germany (CCPR/C/DEU/2002/5) at its 2170th and 2171st meetings (CCPR/C/SR.2170 and 2171), on 17 March 2004, and adopted the following concluding observations at its 2188th meeting (CCPR/C/SR.2188), on 30 March 2004.

Introduction

(2) The Committee welcomes the timely submission of the report by the State party which was drafted in accordance with its guidelines. The Committee notes with appreciation that the report contains useful and detailed information on developments since the consideration of the fourth periodic report and makes reference to previous concluding observations. The Committee also welcomes the responses to the list of issues in written form, which greatly facilitated the dialogue between the delegation and the Committee members. In addition, the Committee appreciates the delegation's oral responses given to the questions raised and the concerns expressed during the consideration of the report.

Positive aspects

(3) The Committee welcomes the measures taken to improve the protection and promotion of human rights, namely:

(a) In 1998, the establishment by the German Federal Parliament of a Committee on Human Rights and Humanitarian Aid;

(b) On 8 March 2001, the creation of a new National Human Rights Institute entrusted with the task of monitoring the internal human rights situation and generating public awareness in that area;

(c) The submission by the Federal Government of a biannual human rights report to the German Federal Parliament, which, for the first time in 2002, dealt in detail with the internal human rights situation.

(4) The Committee appreciates the measures taken to improve the protection of children, in particular legislation granting children a right to education in a non-violent environment, the removal of remaining differences in the legal status of children born in and out of wedlock, and the introduction of elements of *jus soli* for children born in Germany to foreign parents.

(5) The Committee welcomes the progress made in the area of human rights education, in particular for police officers, soldiers and youth.

(6) The Committee notes with satisfaction the State party's measures and the progress made, despite continuing problems, in combating xenophobic and anti-Semitic violence.

(7) The Committee welcomes the State party's clear and unambiguous position that torture is never acceptable, whatever the circumstances.

(8) The Committee commends the continuing positive role of the Federal Constitutional Court in safeguarding fundamental rights, e.g. through its decisions to strengthen the protection of religious liberties and to improve the protection of privacy in the area of audio surveillance of residential premises.

(9) Lastly, the Committee takes note with appreciation of the involvement of Parliament and non-governmental organizations in the preparation of the report and the planned follow-up to the concluding observations.

Principal subjects of concern and recommendations

(10) The Committee regrets that Germany maintains its reservations, in particular regarding article 15, paragraph 1, of the Covenant, a non-derogable right, and those made when the Optional Protocol was ratified by the State party which partially limits the competence of the Committee with respect to article 26 of the Covenant.

The State party should consider withdrawing its reservations.

(11) The Committee notes with concern that Germany has not yet taken a position regarding the applicability of the Covenant to persons subject to its jurisdiction in situations where its troops or police forces operate abroad, in particular in the context of peace missions. It reiterates that the applicability of the regime of international humanitarian law does not preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of its agents outside their own territories.

The State party is encouraged to clarify its position and to provide training on relevant rights contained in the Covenant specifically designed for members of its security forces deployed internationally.

(12) The Committee notes that owing to the State party's federal structure, in exercising its overall responsibility for compliance with the Covenant it may encounter acts and omissions of the authorities of the Länder in areas of their exclusive competence that are not consistent with the Covenant.

The State party is reminded of its responsibilities in relation to article 50 of the Covenant; it should establish proper mechanisms between the federal and Länder levels to further ensure the full applicability of the Covenant.

(13) While the Committee appreciates progress made in practice in the area of equality for men and women in the public service, it notes with concern that the number of women in senior positions is still very low. It is also concerned about wide disparities, in the private sector, of remuneration between men and women (arts. 3 and 26).

The State party should ensure equal treatment of men and women at all levels of the public service. Furthermore, it should continue to take necessary measures so that women enjoy equal participation in the labour market, in particular in terms of equal wages for work of equal value.

(14) The Committee notes with concern the persistence of domestic violence despite legislation adopted by the State party (arts. 3 and 7).

The State party should reinforce its policy against domestic violence and, in this framework, should take more effective measures to prevent it and assist the victims.

(15) While the Committee notes with satisfaction that the use of firearms by the police is restricted by law to a measure of coercion in extremis and that the number of persons killed or injured by the use of such force has declined in recent years, it is concerned that in some of these cases the use of firearms might not have been justified (art. 6).

(a) **The State party should ensure prompt, thorough and impartial investigation of all cases of persons killed or injured as a consequence of the use of firearms by police forces, bring to justice those responsible for violations of the law, and grant full reparation, including fair and adequate compensation, and rehabilitation to victims and their families.**

(b) **The State party should also provide training to police in methods of controlling difficult situations without using firearms.**

(16) While appreciating the reduction in the number of complaints made public in recent years, the Committee expresses its concern about continuing reports of ill-treatment of persons by the police, including foreigners and members of ethnic minorities. It is concerned that despite the previous concluding observations of the Committee, the State party has not found ways to monitor the situation effectively and still lacks the necessary statistical information on police misconduct (art. 7).

(a) **The State party should promptly, thoroughly and impartially investigate all allegations of police ill-treatment and, where appropriate, bring those responsible to justice.**

(b) **The State party should protect persons who bring complaints of ill-treatment against police officers against intimidation and provide full reparation, including fair and adequate compensation, and rehabilitation to victims and their families.**

(c) **The State party should improve monitoring of police misconduct by designating a central governmental agency to maintain and publish comprehensive statistics on ill-treatment and other relevant misconduct, including racist abuse, the measures taken in such cases and the results of investigations and disciplinary or penal proceedings. Furthermore, the State party should establish independent bodies throughout its territory to investigate complaints of ill-treatment by the police.**

(17) The Committee notes the vulnerable situation of elderly persons placed in long-term care homes, which in some instances has resulted in degrading treatment and violated their right to human dignity (art. 7).

The State party should pursue its efforts to improve the situation of elderly persons in nursing homes.

(18) The Committee is concerned that, despite positive measures adopted by the State party, trafficking in human beings, especially women, persists within the territory of Germany (art. 8).

The State party should strengthen its measures to prevent and eradicate this practice, as well as to protect victims and witnesses.

(19) The Committee reiterates its concern that adherence to certain religious organizations or beliefs constitutes one of the main grounds for disqualifying individuals from obtaining employment in the public service and that this may in certain circumstances violate the rights guaranteed in articles 18 and 25 of the Covenant.

The State party should comply fully with its obligations under the Covenant in this respect.

(20) While it takes note of the firm stance of Germany in favour of respect for human rights within the framework of the anti-terrorism measures it adopted subsequent to the events of 11 September 2001, the Committee expresses its concern regarding the effect of those measures on the situation of human rights in Germany, in particular for certain persons of foreign extraction, because of an atmosphere of latent suspicion towards them (arts. 17, 19, 22 and 26).

(a) **The State party should ensure that anti-terrorism measures are in full conformity with the Covenant. The State party is requested to ensure that the concern over terrorism is not a source of abuse, in particular for persons of foreign extraction, including asylum-seekers.**

(b) The State party is also requested to undertake an educational campaign through the media to protect persons of foreign extraction, in particular Arabs and Muslims, from stereotypes associating them with terrorism, extremism and fanaticism.

(21) The Committee is concerned that the Roma continue to suffer prejudice and discrimination, in particular with regard to access to housing and employment. It also expresses its concern at reports that Roma are disproportionately affected by deportation and other measures to return foreigners to their countries of origin (arts. 26 and 27).

(a) The State party should intensify its efforts to integrate Roma communities in Germany in a manner respectful of their cultural identity, in particular through the adoption of positive action with regard to housing, employment and education.

(b) The State party should guarantee the principle of non-discrimination in its practice relating to deportation and return of foreigners to their countries of origin.

(22) The State party should disseminate widely the text of its fifth periodic report and the present concluding observations.

(23) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, the relevant information on the implementation of the Committee's recommendations in paragraph 11. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 April 2009, information on the other recommendations made and on the Covenant as a whole.

69. Suriname

(1) The Committee considered the situation of civil and political rights in Suriname at its 2054th and 2055th meetings (CCPR/C/SR.2054 and 2055), held on 22 and 23 October 2002 in the absence of a report, but in the presence of a delegation. At its 2066th meeting (CCPR/C/SR.2066), held on 31 October 2002, it adopted provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure. Pursuant to the provisional concluding observations, the Committee invited the State party to submit its second periodic report within six months. The State party submitted its report within the deadline set by the Committee. The Committee considered the second periodic report of Suriname at its 2173rd and 2174th meetings (CCPR/C/SR.2173 and 2174), on 17 and 18 March 2004. At its 2189th meeting (CCPR/C/SR.2189), held on 30 March 2004, it adopted the following concluding observations.

Introduction

(2) The Committee welcomes the submission of the State party's second periodic report, which contains detailed information on Surinamese legislation in the area of civil and political rights, and the opportunity to resume its review of the human rights situation in Suriname.

It regrets the very long delay in submitting the report, which was due in 1985, and the scarcity of information on the human rights situation in actual fact, which makes it difficult for the Committee to determine whether the State party's population is able fully and effectively to exercise the rights guaranteed by the Covenant.

(3) The Committee welcomes the willingness of the State party to cooperate and to resume its dialogue with the Committee on the application of the rights guaranteed by the Covenant in Suriname, as evidenced by the presence of a delegation during the Committee's seventy-sixth session in October 2002 and during the present session. The Committee appreciates the efforts made by the delegation to provide answers to its questions. It regrets that the delegation was not in a position to provide full information on the current situation of civil and political rights in the State party, or to respond specifically to several of the issues raised by members of the Committee.

Positive aspects

(4) The Committee welcomes the reforms in the State party's legislation since the review of the initial report in 1980, in particular with respect to the creation of democratic institutions and the recognition, in the Constitution of 1987, of fundamental human rights and freedoms.

(5) The Committee welcomes the fact that the Covenant takes precedence over domestic law and that provisions of the Covenant may be invoked directly in the domestic courts.

(6) The Committee welcomes the delegation's information that human rights training is provided for the police, the judiciary, teachers and students and recommends that the State party extend such training to other parts of the Surinamese population.

Principal subjects of concern and recommendations

(7) The Committee is concerned at the continued impunity of those responsible for human rights violations committed during the period of military rule. In particular, investigations into the December 1982 killings and the 1986 Moiwana massacre remain pending and have not yet produced concrete results. The information supplied by the delegation that all such cases are still being investigated is disturbing, especially given the lapse of time since their occurrence. The Committee further considers that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3, of the Covenant.

> **The State party should give special priority to bringing to justice the perpetrators of human rights violations, including human rights violations committed by police and military personnel. The perpetrators of such acts must be tried and punished if found guilty, regardless of rank and political status. The State party should take all necessary measures to prevent the recurrence of such acts. Victims and their relatives should be provided with adequate compensation.**

(8) The Committee regrets that the State party has not provided detailed information concerning the implementation of the Committee's findings in its Views on communications Nos. 146/1983 and 148-154/1983 (*Baboeram et al. v. Suriname*).

The State party is urged to implement the Committee's findings on communications Nos. 146/1983 and 148-154/1983. The State party should consider adopting appropriate procedures for implementing the Committee's Views under the Optional Protocol.

(9) The Committee regrets that the State party has not provided the information requested on the domestic application of article 4 of the Covenant and whether national legislation further spells out the modalities under which article 23 of the Constitution may be invoked. The Committee has no information as to which factors are considered "a threat to the life of the nation" justifying derogation from particular rights, or which factors justify continued derogation.

The State party should ensure that the implementation of article 23 of the Constitution is in conformity with article 4 of the Covenant. Instances of detention during a public emergency should be strictly limited.

(10) The Committee notes that while the State party has not carried out judicial executions for almost 80 years, the death penalty remains on the statute books for the offences of aggravated murder, premeditated murder and treason.

The Committee encourages the State party to abolish the death penalty and accede to the Second Optional Protocol to the Covenant.

(11) While the Committee notes that the State party is taking measures to investigate and punish police officers involved in incidents of ill-treatment of detainees, including beatings and sexual abuse of detainees (especially during the initial stages of detention), it remains concerned that such incidents continue to be reported (arts. 7 and 10).

Allegations of ill-treatment in custody should be investigated by an independent mechanism, and those held responsible should be prosecuted and receive appropriate punishment. Victims of such treatment should receive full reparation, including fair and adequate compensation. Appropriate human rights training should continue to be given to law enforcement personnel.

(12) The Committee notes with concern the high incidence of domestic violence and the absence of appropriate legislation to protect women against such violence. It notes the delegation's additional information that acts of domestic violence may be prosecuted under alternative provisions of the Criminal Code (arts. 3 and 7).

The State party should take legal and educational measures to combat domestic violence. It is invited to educate the population at large about the need to respect women's rights and dignity.

(13) While the Committee has noted the efforts made by the State party to deal with the situation regarding trafficking in women, in particular through legislation and international cooperation, it remains concerned about the slow progress in implementing those policies (arts. 3 and 8).

The State party should ensure that effective measures are taken to combat trafficking in women.

(14) While noting the State party's acknowledgment that there are problems with lengthy pre-trial detentions, as well as its denial that incommunicado detention is practised, the Committee remains concerned that domestic law provides for the possibility that a detainee may not be brought for the first time before a judge until 44 days after his detention and about reports that prisoners are kept in incommunicado detention, and that in both cases this apparently occurs without access to a lawyer (art. 9, paras. 3 and 4).

> **The State party should correct the above practice forthwith, as it is incompatible with article 9, paragraphs 3 and 4, of the Covenant. It should amend its relevant legislation without delay to ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge, in conformity with the provisions of article 9, paragraph 3, of the Covenant.**

(15) While acknowledging the efforts made by the State party to reform its prison system and construct new prison facilities to overcome the problem of overcrowding, the Committee expresses its concern at the persistence of poor prison conditions and serious overcrowding. It also notes that the backlog in the adjudication of cases encountered by the judicial system contributes to this situation.

> **The State party should take appropriate measures to reduce the number of persons in detention and to improve prison conditions in order to comply with article 10 of the Covenant. Additional resources should be allocated to the judiciary, in order to reduce the number of detainees in pre-trial detention.**

(16) The Committee regrets that the State party has not provided information, as requested, about the role of military courts, their jurisdiction and composition, and how the State party ensures their independence and impartiality.

> **The State party should ensure that military courts, if operating, function in accordance with the rights set out in the Covenant, in particular in accordance with the rights laid down in article 14. The State party should provide the Committee with the relevant information.**

(17) The Committee is concerned about the compatibility with the Covenant of the low age of criminal responsibility in Suriname (10 years), having regard in particular to reliable information about the ill-treatment of children in detention and the long delays in pending trials.

> **The State party should revise its legislation with regard to the age of criminal responsibility, which at its present level is unacceptable under international standards. The State party should inform the Committee as to how its practice complies with articles 10, paragraph 2 (b), 14, paragraph 4, and 24 of the Covenant.**

(18) The Committee is concerned that the current Asian Marriage Act provides for "arranged marriages" and sets the minimum age for marriage at 13 years for female and 15 years for male citizens of Asian descent. These ages are incompatible with articles 3 and 26 and article 24, paragraph 1, of the Covenant. Marriage at such a young age, and in particular arranged marriages, is also incompatible with article 23 of the Covenant, which stipulates that no marriage

shall be entered into without the free and full consent of the intending spouses. While the State party submits that citizens of non-Asian descent also may marry under this Act, it has not responded to the Committee's request for statistics on how many non-Asians have actually done so (arts. 23 and 24).

> **The State party should take steps to change the current marriage legislation and to bring it into conformity with the Covenant.**

(19) While noting the State party's effort to establish a "nucleus centre" to provide schooling in the interior of the country, the Committee remains concerned at reports indicating that as few as 40 per cent of children living in the interior of the country attend primary school, thus depriving many children of the possibility of attending school on an equal footing with children in other parts of the country (art. 26).

> **The State party should ensure that all children are afforded equal opportunities for access to schooling, and that school fees do not prevent them from receiving primary education.**

(20) While the Committee welcomes the State party's Gender Policy Programme, including a timetable for reviewing several provisions in domestic laws that are discriminatory against women, it remains concerned that discriminatory legislation in relation to gender still exists, including in the Personnel Act, the Identity Act, the Nationality and Residence Act and the Elections Act (arts. 3 and 26).

> **The State party is invited to eliminate any existing legislation that discriminates in relation to gender.**

(21) The Committee is concerned at the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources. It regrets that logging and mining concessions in many instances were granted without consulting or even informing indigenous and tribal groups, in particular the Maroon and Amerindian communities. It also notes allegations that mercury has been released into the environment in the vicinity of such communities, which continues to threaten the life, health and environment of indigenous and tribal peoples. The latter are also said to be victims of discrimination in employment and education, and generally with respect to their participation in other areas of life (arts. 26 and 27).

> **The State party should guarantee to members of indigenous communities the full enjoyment of all the rights recognized by article 27 of the Covenant, and adopt specific legislation for this purpose. A mechanism to allow for indigenous and tribal peoples to be consulted and to participate in decisions that affect them should be established. The State party should take the necessary steps to prevent mercury poisoning of waters, and thereby of inhabitants, in the interior of the State party's territory.**

(22) The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations. The State party is further invited to make publicly available, including to the Committee, the findings of the Commission to Prepare an Institution Charged with Investigating Violation of Human Rights in Suriname.

(23) The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information, within one year, on the implementation of the Committee's recommendations contained in paragraphs 11 and 14 above. The State party's third periodic report should be submitted to the Committee by 1 April 2008.

70. Uganda

(1) The Committee considered the initial report of Uganda (CCPR/C/UGA/2003/1) at its 2177th, 2178th and 2179th meetings (CCPR/C/SR.2177-2179), held on 22 and 23 March 2004 and adopted the following concluding observations at its 2191st meeting (CCPR/C/SR.2191), held on 31 March 2004.

Introduction

(2) The Committee welcomes the detailed and comprehensive initial report of Uganda. It commends the frankness of the report, which admits shortcomings in the implementation of the Covenant in the State party, and the fact that the report was prepared after consultation with civil society. However, the Committee regrets the delay of over seven years in the submission of the report.

Positive aspects

(3) The Committee welcomes the ratification by the State party of the Optional Protocol to the Covenant in November 1995.

(4) The Committee also welcomes the establishment in 1996 of the Uganda Human Rights Commission, which is endowed with powers to address human rights violations and seeks to adhere to the Paris Principles.

(5) The Committee welcomes the ruling of the Supreme Court in *Kyawanywa v. the Attorney-General*, declaring corporal punishment as unconstitutional.

Principal subjects of concern and recommendations

(6) The Committee is concerned about the uncertain status of the Covenant in domestic law (art. 2).

The State party should clarify the status of the Covenant in domestic law.

(7) While acknowledging the important role of the Uganda Human Rights Commission in the promotion and protection of human rights in Uganda, the Committee is concerned about recent attempts to undermine the independence of the Commission. It is also concerned about the frequent lack of implementation by the State party of the Commission's decisions concerning both awards of compensation to victims of human rights violations and the prosecution of human rights offenders in the limited number of cases in which the Commission had recommended such prosecution (art. 2).

The State party should ensure that decisions of the Uganda Human Rights Commission are fully implemented, in particular concerning awards of compensation to victims of human rights violations and prosecution of human rights offenders. It should ensure the full independence of the Commission.

(8) The Committee notes the adoption of the Anti-Terrorism Act of June 2002, pursuant to Security Council resolution 1373 (2001). It is concerned that section 10 of the Act criminalizes a "terrorist organization" without any reference to a particular criminal offence committed by or through such an organization. It is also concerned that section 11 of the Act does not establish objective criteria for determining membership in a "terrorist organization" (arts. 2 and 15).

The State party should review the Anti-Terrorist Act with a view to ensuring that the provisions set out in sections 10 and 11 are in full conformity with the Covenant.

(9) The Committee notes with concern the continued existence of customs and traditions in the State party that affect the principle of equality of men and women and that may impede the full implementation of many provisions of the Covenant. In particular, the Committee deplores the fact that polygamy is still recognized by law in Uganda; in this context, it refers to its general comment No. 28, which states that polygamy is incompatible with equality of treatment with regard to the right to marry. The provisions in the proposed Domestic Relations Bill which would discourage the practice of polygamy are not sufficient (arts. 3 and 26).

The State party should take legislative measures to outlaw polygamy in addition to strengthening its ongoing awareness-raising campaigns.

(10) The Committee takes note that the State party has acknowledged the persistence of female genital mutilation in some areas of the country, despite article 33, paragraph 6, of the Constitution which prohibits cultures, customs and traditions which are against the dignity, welfare or interest of women. The Committee regrets that the State party has not taken all the necessary measures to eradicate this practice (arts. 3, 7 and 26).

The State party should take appropriate measures, as a matter of priority, to outlaw and penalize female genital mutilation and to effectively eradicate it in practice.

(11) The Committee is concerned about the persistence of domestic violence and the lack of investigation, prosecution and punishment of perpetrators (arts. 3, 7 and 26).

The State party should adopt effective measures to prevent domestic violence, punish offenders and provide material and psychological relief to the victims. It should also train law enforcement officials, in particular police officers, to deal with cases of domestic violence.

(12) The Committee regrets that the State party has not taken sufficient steps to ensure the right to life and the right to liberty and security of persons affected by the armed conflict in northern Uganda, in particular internally displaced persons currently confined to camps (arts. 6 and 9).

The State party should take immediate and effective measures to protect the right to life and liberty of the civilian population in areas of armed conflict in northern Uganda from violations by members of the security forces. In particular, it should protect internally displaced persons confined in camps, which are constantly exposed to attacks from the Lord's Resistance Army.

(13) The Committee is concerned about the broad array of crimes for which the death penalty may be imposed. It finds incompatible with the Covenant that the death penalty is mandatory for the crimes of murder, aggravated robbery, treason and terrorism resulting in the death of a person, and the imposition of death sentences by field courts-martial without the possibility of appeal or to seek pardon or commutation of the sentence. The Committee also expresses its concern about the long periods of time which convicted prisoners spend on death row (almost 20 years in one case) (arts. 6 and 14).

The State party is urged to limit the number of offences for which the death penalty is provided and to ensure that it is not imposed except for the most serious crimes. The State party should also abolish mandatory death sentences and ensure the possibility of full appeal in all cases, as well as the right to seek pardon or commutation of the sentence.

(14) While the Committee takes note of the measures taken by the State party to deal with the widespread problem of HIV/AIDS, it remains concerned about the effectiveness of these measures and the extent to which they guarantee access to medical services, including antiretroviral treatment, to persons infected with HIV (art. 6).

The State party is urged to adopt comprehensive measures to allow a greater number of persons suffering from HIV/AIDS to obtain adequate antiretroviral treatment.

(15) The Committee is concerned about the magnitude of the problem of abduction of children, in particular in northern Uganda. While acknowledging the measures taken by the State party to mitigate it, the Committee is concerned that available data do not show a decrease in the number of abductions. It is also concerned about the fate of former child soldiers (arts. 6, 8 and 24).

The State party should take the necessary steps, as a matter of extreme urgency and in a comprehensive manner, to face the abduction of children, and to reintegrate former child soldiers into society.

(16) While the Committee notes that several measures have been taken to prevent the excessive use of force by law enforcement officials, it remains concerned about situations in which they have allegedly extrajudicially executed civilians, such as the September 2002 incident in Gulu, or the one that took place during operation "Wembley" in June 2002 (art. 6).

The State party should ensure that law enforcement officials are prosecuted for any disproportionate use of firearms against civilians. Additionally, it should continue its efforts to train police agents, members of the military and prison officers to scrupulously respect applicable international standards.

(17) The Committee takes note of the explanation provided by the delegation about the outlawing of "safe houses", places of unacknowledged detention where persons have been subjected to torture by military personnel. Nevertheless it remains concerned that State agents continue arbitrarily to deprive persons of their liberty, including in unacknowledged places of detention, in particular in northern Uganda. It is also concerned about the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials (arts. 7 and 9).

> **The State party should take urgent and effective measures to prevent arbitrary detention and torture by State agents. It should thoroughly investigate any alleged case of arbitrary detention and torture, prosecute those held responsible and ensure that full reparation is granted, including fair and adequate compensation.**

(18) The State party has acknowledged the deplorable prison conditions in Uganda. The most common problems are overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The treatment of prisoners continues to be a matter of concern to the Committee. There are reported incidents of corporal punishment for disciplinary offences. Solitary confinement and deprivation of food are also used as disciplinary measures. Juveniles and women are often not kept separate from adults and males. The Committee has taken note of the measures implemented by the State party to counteract these shortcomings, including the introduction of community service as an alternative to imprisonment. However, it notes that they are inadequate to overcome the problems. It is also concerned about the high percentage of persons detained on remand (almost 70 per cent of inmates) (arts. 7 and 10).

> **The State party should terminate practices contrary to article 7 and bring prison conditions into line with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate action to reduce overcrowding in prisons as well as the number of persons detained on remand.**

(19) The Committee is concerned at the practice of imprisoning persons for contractual debts, which is incompatible with article 11 of the Covenant.

> **The State party should abolish imprisonment for debt.**

(20) The Committee has observed with concern the forced employment of children in activities harmful to their health and well-being, as well as the ineffectiveness of the measures adopted to deal with this problem (arts. 8 and 24).

> **The State party should adopt measures to avoid the exploitation of child labour and to ensure that children enjoy special protection, in accordance with article 24 of the Covenant. It should also provide for effective sanctions against those involved in such practices.**

(21) The Committee is concerned about shortcomings in the administration of justice, such as delays in the proceedings and in pre-trial detention, the lack of legal assistance provided to non-capital offenders and the conditions in which a confession may be secured. Despite the

measures taken by the State party to address these situations, the Committee regrets that their continued existence contributes to a widespread sense of impunity as well as impairing the full enjoyment of guarantees (art. 14).

> **The State party should take steps to remedy shortcomings in the administration of justice in order to ensure full respect for the judicial guarantees enshrined in the Covenant. It should revise its legislation and practices, in particular with regard to the above-mentioned concerns.**

(22) The Committee is concerned that peaceful demonstrations organized by opposition political parties have been forcibly dispersed by the police and that freedom of movement of political opponents has also been restricted in certain cases. It remains concerned at the constraints which limit the right of political parties to participate in periodic elections, to criticize the Government and to take part in the decision-making process. Notwithstanding the fact that the delegation referred to the State party's wish to organize multiparty elections in 2006, the Committee remains concerned that no specific information has been provided about the practical measures envisaged to attain this goal (arts. 22 and 25).

> **The State party should ensure the full enjoyment of the right to freedom of association, in particular in its political dimension. The Committee considers that the State party should ensure that the general elections scheduled for 2006 effectively allow for multiparty participation.**

(23) The Committee is concerned at the practice of early and forced marriage in the State party, despite the minimum age for marriage of 18 years (art. 23).

> **The State party should take effective steps to do away with this practice and to sanction those involved in its occurrence.**

(24) The State party should widely publicize the present examination of its initial report by the Committee and, in particular, these concluding observations.

(25) The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to provide, within one year, information on the implementation of the Committee's recommendations regarding paragraphs 10, 12 and 17 above. The Committee also requests the State party to provide in its next periodic report, to be presented by 1 April 2008, information on the other recommendations made on the implementation of the Covenant as a whole.

71. Lithuania

(1) The Committee considered the second periodic report of Lithuania (CCPR/C/LTU/2003/2) at its 2181st and 2182nd meetings, on 24 and 25 March 2004, and subsequently adopted, at the 2192nd meeting, held on 1 April 2004 the following concluding observations.

Introduction

(2) The Committee welcomes the second report of Lithuania and expresses its appreciation for a frank and constructive discussion with the delegation. It welcomes the concise nature of the report and pertinent information provided on the practical implementation of legislation

Positive aspects

(3) The Committee appreciates the ongoing efforts of the State party to reform its legal system and revise its legislation so that the protection they offer is in accordance with the Covenant. In particular, it welcomes the establishment of the Parliamentary Committee on Human Rights and the adoption of three ombudsmen institutions: the Parliamentary Ombudsmen, the Ombudsman for Equal Opportunities and the Ombudsman for the Rights of the Child. The Committee encourages the State party to extend the powers of the latter two Ombudsmen to enable them to bring court actions in the same way as the Parliamentary Ombudsmen.

(4) The Committee welcomes the amendment to the Law on Compensation for the Damage Caused by Unlawful Acts of State Authorities, which is currently pending before Parliament. It encourages the State party to adopt this legislative amendment, which will further improve the implementation of the Committee's Views on communications under the Optional Protocol, including the provision of compensation.

(5) The Committee welcomes Lithuania's accession to the Second Optional Protocol to the Covenant, which was ratified on 2 August 2001.

Subjects of concern and Committee's recommendations

(6) The Committee notes that some 30 per cent of the recommendations and proposals issued by the Parliamentary Ombudsman have apparently not been implemented (art. 2).

> **The State party should take appropriate measures to increase the level of implementation of these decisions.**

(7) The Committee is concerned about the formulation of the draft law on the legal status of foreigners, which, according to the State party's third report to the Counter-Terrorism Committee of the Security Council, may allow for the removal of foreigners who are regarded as a threat to State security, despite the fact that they may be exposed to a violation of their rights under article 7 in the country of return. The Committee is also concerned that in cases of alleged threat to the State, the implementation of the decision to remove a foreigner may not be suspended prior to consideration of an appeal, which may have the effect of denying that individual a remedy under article 2.

> **The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant. In particular, it should ensure absolute protection for all individuals, without exception, against refoulement to countries where they risk violation of their rights under article 7.**

(8) While welcoming the adoption of the Programme for Roma Integration into Lithuanian Society and the oral information provided by the delegation on the achievements of the first phase of the Programme, the Committee continues to be concerned about the social and economic situation of the Roma minority and its impact on the full enjoyment of their rights under the Covenant. It notes that the Roma continue to suffer from discrimination, poverty and unemployment, and play no part in the public life of the State party (arts. 26 and 27).

The State party should provide the Committee with an assessment of the results of the first phase of the Programme, including detailed information on its outcome and achievements and the extent to which it has improved the social and economic conditions of the Roma minority. The Committee also encourages the State party to take this assessment into account in designing and implementing the second phase of the Programme.

(9) The Committee is concerned that incidents of domestic violence against women and children are rising. While noting the efforts made by the State party to combat domestic violence, including the National Equal Opportunities Programme and the Action Plan on Violence against Children, the Committee notes that there is no special legislation relating to domestic violence within the legal system (arts. 3 and 7).

The State party should take all necessary measures, including the enactment of appropriate legislation, to deal with domestic violence. New legislation should include the introduction of restraining orders as a means of protecting women and children from violent family members. The State party should continue its efforts to provide shelters and other support for victims of domestic violence and take measures to encourage women to report domestic violence to the authorities, and to make police officers more sensitive in their handling of allegations of domestic violence, including rape and its psychological impact on the victim.

(10) The Committee is concerned that there is no independent oversight mechanism for the investigation of complaints of criminal conduct against members of the police. This may contribute to impunity for police officers involved in human rights violations (arts. 2, 7 and 9).

The State party should establish an independent body with authority to receive, investigate and adjudicate all complaints of excessive use of force and other abuse of power by the police.

(11) The Committee is concerned that under article 12 of the Law on Pre-Trial Detention and the Code on Enforcement of Punishment adults may be detained together with minors in "exceptional cases". While noting the State party's explanation that separation of minors and adults is the norm, the Committee observes that the law does not contain criteria for determining which cases are exceptional.

The State party should ensure that juveniles accused of criminal offences and deprived of their liberty are separated from adults, in accordance with article 10, paragraph 2 (b), of the Covenant.

(12) While noting the information provided orally by the delegation on sex education in schools, the Committee is concerned at the high rate of unwanted pregnancies and abortions among young women between the ages of 15 and 19, and the high number of these women contracting HIV/AIDS, with consequent risks to their life and health (art. 6).

The State party should take further measures to help young women avoid unwanted pregnancies and HIV/AIDS, including strengthening its family planning and sex education programmes.

(13) The Committee is concerned that persons may still be detained in respect of administrative offences, and it regrets the paucity of information it has received on various forms of administrative detention, such as involuntary psychiatric care, immigration detention and detention as administrative punishment. It is also concerned that persons may be detained in police custody beyond the 48-hour limit within which they must either be brought before a judge on criminal charges or be made subject to the proceedings applicable to administrative offences, and that they may be returned to police custody for further investigation (arts. 7 and 9).

> **The State party should eliminate the institution of detention for administrative offences from its system of law enforcement and re-examine its legislation to ensure that the Covenant is complied with, including article 9, paragraph 4, which requires effective judicial review of all forms of detention. It should also ensure that persons ordered detained beyond the statutory 48-hour period are not held in police custody and that, once remanded in detention in prison, they cannot be returned to police custody.**

(14) The Committee is concerned at the situation regarding trafficking in persons, in particular the low number of criminal proceedings instituted for documented cases of trafficking (arts. 3 and 8).

> **The State party should reinforce measures to combat trafficking of women and children and impose sanctions on those who exploit women for such purposes. The Committee encourages the State party to continue to protect women who are victims of trafficking to enable them to seek refuge and testify against the persons responsible in criminal or civil proceedings. The State party should also cooperate with other States in eliminating trafficking across national borders. The Committee wishes to be informed of the measures taken and their result.**

(15) The Committee is concerned at information that asylum-seekers from certain countries are prevented from requesting asylum at the border. In addition, it is concerned that although asylum-seekers are only detained in "exceptional circumstances", the criteria for establishing such circumstances remain unclear. Moreover, the Committee is concerned about the very low number of persons who have been granted asylum in recent years, when compared with the number of applications over the same period (arts. 12 and 13).

> **The State party should take measures to secure access for all asylum-seekers, irrespective of their country of origin, to the domestic asylum procedure, in particular when applications for asylum are made at the border. The State party should also provide information on the criteria on the basis of which asylum-seekers may be detained, as well as on the situation with regard to minors seeking asylum. It should ensure that minors are only detained when justified in the particular circumstances of the case and their detention is regularly reviewed by a court or judicial officer.**

(16) The Committee reiterates the concern expressed in its concluding observations on the State party's previous report that the registration process continues to make distinctions between different religions, and that this amounts to unequal treatment contrary to articles 18 and 26.

It notes that religious communities that do not meet the registration criteria are disadvantaged in that they may not register as legal persons and, therefore, as acknowledged by the delegation, may face certain difficulties, inter alia with respect to the restitution of property.

> **The State party should ensure that there is no discrimination in law or in practice in the treatment of different religions.**

(17) The Committee reiterates the concern expressed in its concluding observations on the previous report about conditions of alternative service available to conscientious objectors to military service, in particular with respect to the eligibility criteria applied by the Special Commission and the duration of such service as compared with military service.

> **The Committee recommends that the State party clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief, to ensure that the right to freedom of conscience and religion is respected by permitting in practice alternative service outside the defence forces, and that the duration of service is not punitive in nature (arts. 18 and 26).**

(18) The Committee is concerned that the new Labour Code is too restrictive in providing, inter alia, for the prohibition of strikes in services that cannot be considered as essential and requiring a two-thirds majority to call a strike, which may amount to a violation of article 22.

> **The State party should make the necessary amendments to the Labour Code to ensure the protection of the rights guaranteed under article 22 of the Covenant.**

(19) The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.

(20) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the implementation of the Committee's recommendations in paragraphs 7, 9 and 13 above. The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 April 2009.

72. Belgium

(1) The Human Rights Committee considered the fourth periodic report of Belgium (CCPR/C/BEL/2003/4) at its 2197th, 2198th and 2199th meetings, on 12 and 13 July 2004 (CCPR/C/SR.2197, 2198 and 2199). It adopted the following concluding observations at its 2210th and 2214th meetings, on 21 and 24 July 2004 (see CCPR/C/SR.2210 and 2214).

Introduction

(2) The Committee welcomes the fourth periodic report of Belgium and the written and oral responses given to the list of issues. It appreciates the quality of the information provided, but regrets the shortage of information on how effective the steps taken to implement the Covenant have been. It pays tribute to the delegation for its spirit of openness, and welcomes the constructive dialogue that took place.

Positive aspects

(3) The Committee welcomes the ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

(4) The Committee welcomes the entry into force on 1 May 2004 of the Act establishing a guardianship mechanism for unaccompanied foreign minors, and the assurance that such minors will no longer be held in closed facilities even if they are refused entry into the country.

(5) The Committee welcomes the adoption of the Act of 19 March 2004 granting the right to vote in local elections to foreigners from countries other than those of the European Union.

Principal subjects of concern and recommendations

(6) The Committee is concerned at the fact that the State party is unable to affirm, in the absence of a finding by an international body that it has failed to honour its obligations, that the Covenant automatically applies when it exercises power or effective control over a person outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent assigned to an international peacekeeping or peace enforcement operation (art. 2).

The State party should respect the safeguards established by the Covenant, not only in its territory but also when it exercises its jurisdiction abroad, as for example in the case of peacekeeping missions or NATO military missions, and should train the members of such missions appropriately.

(7) The Committee regrets that Belgium has not withdrawn its reservations to the Covenant, in particular the reservations to articles 10 and 14.

The State party should reconsider its position on this matter.

(8) While appreciating the many projects intended to give better effect to the Covenant, the Committee notes with concern that some have been under consideration for many years. It also regrets that several of its recommendations have not been applied.

The State party should make the adoption of projects and the concrete application of laws designed to give better effect to the Covenant a top priority.

(9) The Committee is concerned at the impact of the immediate application of the Act of 5 August 2003 on complaints lodged under the Act of 16 June 1993 relating to sanctions for serious violations of international humanitarian law (arts. 2, 5, 16 and 26).

The State party should guarantee victims' acquired right of access to an effective remedy without discrimination of any kind, insofar as the binding rules of general international law relating to diplomatic immunity do not apply.

(10) The Committee is concerned at the small number of convictions in criminal and disciplinary proceedings of military personnel suspected of human rights violations during the United Nations operation in Somalia. It does note that the State party has removed the jurisdiction of military courts over acts committed by military personnel in peacetime (art. 2).

The State party should prohibit, and punish effectively, any conduct by military personnel, whether in peacetime or wartime, that is contrary to human rights, in particular the conduct set forth in articles 6 and 7 of the Covenant.

(11) The Committee is concerned at the fact that the right to an effective remedy for individuals illegally in Belgium is jeopardized by the fact that police officers are obliged to report their presence. It notes in addition that the lengths of stay authorized to enable illegal aliens who have lodged complaints to complete proceedings to assert their rights under the Covenant remain at the discretion of the Aliens Office (arts. 2 and 26).

Besides adjusting authorized lengths of stay, the State party should devise additional ways of guaranteeing such individuals the right to an effective remedy.

(12) The Committee is concerned about the persistence of allegations of police violence, often accompanied by racial discrimination. According to certain reports, investigations are not always thorough and judgements, when handed down, are still mostly of a token nature (arts. 2 and 7).

The State party should put a stop to all police violence and step up its efforts to conduct more thorough inquiries. Actions alleging abuse or violence brought against members of the forces of law and order, and actions brought by the forces of law and order against alleged victims, should be routinely linked.

(13) The Committee takes note of the delegation's explanations concerning the independence of the investigative services working for Standing Committee P, but observes that doubts persist concerning the independence and objectivity of those services (arts. 2 and 7).

The State party should adjust the membership of the investigative services with a view to ensuring that they are genuinely efficient and independent.

(14) The Committee is concerned by fresh allegations of excessive force being used when aliens are deported, despite the entry into force of new guidelines (arts. 6 and 7).

The State party should put an end to the excessive use of force when aliens are deported. Those responsible for effecting such deportations should be better trained and monitored.

(15) While welcoming efforts to combat people-smuggling and trafficking in human beings, the Committee is concerned at the fact that residence permits are not granted to victims of trafficking unless they collaborate with the judicial authorities, and that they are given financial assistance in the event of violence only subject to restrictive conditions. It observes that there are still problems in coping with large groups of intercepted migrants (art. 8).

The State party should continue its efforts, do more to look after the victims of trafficking in human beings as such, and ensure that the victims of people-smuggling are properly looked after. The State party should provide the Committee with more detailed information and statistics on the actual implementation, in the criminal and other domains, of the measures adopted.

(16) The Committee again voices concern over the rights of individuals in custody, bearing in mind the requirements of articles 7, 9 and 14 of the Covenant.

The State party should give priority to the amendment of its Code of Criminal Procedure, which has been planned for many years, and guarantee the rights of individuals in detention to notify their immediate families that they have been detained and to have access to a lawyer and a doctor within the first few hours of detention. Provision should also be made for routine medical checks at the beginning and end of periods in custody.

(17) The Committee is concerned that foreigners held in closed facilities pending expulsion and then released by judicial decision have been held in the transit area of the national airport under questionable sanitary and social conditions. There are reports of periods of detention extending to several months in some cases. Such practices, in the Committee's view, are akin to arbitrary detention and can lead to inhuman and degrading treatment (arts. 7 and 9).

The State party should put an immediate stop to the holding of foreigners in the airport transit area.

(18) The Committee is concerned that, despite the recommendations it made in 1998, the State party has not ended its practice of keeping mentally ill people in prisons and psychiatric annexes to prisons for months before transferring them to social protection establishments. It reminds the State party that this practice is inconsistent with articles 7 and 9 of the Covenant.

The State party should end this practice as quickly as possible. It should also ensure that providing mental patients with care and protection and managing social protection establishments both form part of the Ministry of Health's responsibilities.

(19) The Committee is concerned at persistent prison overcrowding in Belgium, due in part to an increase in pre-trial detention, a rise in the number of long prison sentences and a reduction in numbers released on parole (arts. 7 and 10).

The State party should make greater efforts as part of a policy of seeking a reduction in numbers of detainees.

(20) The Committee is concerned at the fact that, nearly seven years after the creation of the Dupont Commission, the State party has still not modernized its prison legislation. It does take note of the assurance by the delegation that a bill on the subject is to be discussed during the present session of the legislature as a matter of priority (art. 10).

The State party should swiftly pass legislation to define the legal status of detainees, clarify the disciplinary regime in prisons and guarantee the right of detainees to lodge complaints and appeal to an independent, readily accessible body against disciplinary punishment.

(21) The Committee welcomes the establishment of an Individual Complaints Board to look into complaints from aliens about the conditions under which they are held and the rules to which they are subject, but is concerned that complaints have to be lodged within five days and do not have the effect of suspending expulsion measures (arts. 2 and 10).

The State party should extend the deadline for lodging complaints and give complaints a suspensive effect on expulsion measures.

(22) The Committee is disturbed that the rules governing the operation of INAD centres (for passengers refused entry to the country) and the rights of the aliens held there do not appear to be clearly established in law (arts. 2 and 10).

The State party should clarify the situation and ensure that the aliens held in such centres are informed of their rights, including their rights to appeal and to lodge complaints.

(23) The Committee is concerned that the ministerial circular of 2002 giving suspensive effect to emergency remedies filed by asylum-seekers against expulsion orders has not been published; this is likely to leave the individuals concerned in a legally uncertain situation (arts. 2 and 13).

The State party should establish clear rules in its legislation to govern appeals against expulsion orders. It should give suspensive effect not only to emergency remedies but also to appeals accompanied by an ordinary request for suspension filed by any alien against an expulsion order concerning him or her.

(24) The Committee is concerned that the Act of 19 December 2003 on terrorist offences gives a definition of terrorism which, in referring to the degree of severity of offences and the perpetrators' intended purpose, does not entirely satisfy the principle of offences and penalties being established in law (art. 15).

The State party should produce a more precise definition of terrorist offences.

(25) The Committee is concerned that the Ministry of the Interior directive on double penalties, which has not been published, attaches conditions to the expulsion of aliens which make it impossible to comply fully with article 17 of the Covenant, inasmuch as it does not guarantee that aliens the majority of whose ties are to Belgium will not be expelled under any circumstances.

The State party should introduce further safeguards, publish rules to ensure that the individuals concerned are aware of and can assert their rights, and pass a law on the subject as quickly as possible.

(26) The Committee is concerned that not a single mosque has yet been granted official recognition in Belgium (arts. 18 and 26).

The State party should step up its efforts to ensure that mosques are recognized and that Islam enjoys the same advantages as other religions.

(27) The Committee notes with concern that a number of racist, xenophobic, anti-Semitic and anti-Muslim acts have taken place in Belgium. It is concerned that political parties urging racial hatred can still benefit from the public financing system, and observes that a bill designed to put an end to that situation is still being considered by the Senate (art. 20).

> **The State party should take all necessary steps to protect communities resident in Belgium against racist, xenophobic, anti-Semitic and anti-Muslim acts. It should have the above-mentioned bill passed as soon as possible, and consider sterner measures to prevent individuals and groups from seeking to arouse racial hatred and xenophobia, in pursuance of article 20, paragraph 2, of the Covenant.**

(28) The Committee takes note of the new Act designed to boost the protection of children against the various forms of sexual exploitation, but is concerned at the frequency with which cases of sexual violence involving children occur (art. 24).

> **The State party should take all necessary steps to protect children in all areas in order to put an end to the cases of sexual violence of which they are victims.**

(29) The Committee sets 1 August 2008 as the date of submission of Belgium's fifth periodic report. It requests that the text of the State party's fourth periodic report and the present concluding observations should be published and widely disseminated throughout the country, and that the fifth periodic report should be brought to the attention of non-governmental organizations working in Belgium.

(30) In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on its response to the Committee's recommendations contained in paragraphs 12, 16 and 27. The Committee requests the State party to provide in its next report information on the other recommendations made and on the implementation of the Covenant as a whole.

73. Liechtenstein

(1) The Committee considered the initial report of Liechtenstein (CCPR/C/LIE/2003/1) at its 2204th and 2205th meetings (CCPR/C/SR.2204 and 2205) on 16 July 2004, and adopted the following concluding observations at its 2220th meeting (CCPR/C/SR.2220) on 28 July 2004.

Introduction

(2) The Committee welcomes the initial report of Liechtenstein, and expresses its appreciation for the frank and constructive discussion with the delegation. It also welcomes the concise nature of the report, which was prepared in conformity with the Committee's reporting guidelines, as well as the detailed written and oral answers provided. Additional written material from the State party received on 21 July 2004 was also taken into account by the Committee.

Positive aspects

(3) The Committee notes that the law and practice of the State party appear to be largely in compliance with its obligations under the Covenant.

(4) The Committee welcomes the State party's commitment not to extradite an individual to a State where he or she might face a capital sentence.

Principal subjects of concern and recommendations

(5) While the Committee notes and welcomes the delegation's statement on the probable withdrawal of some of the State party's reservations to the Covenant, that statement as well as the explanation for the remaining reservations remain open to doubt.

> **The State party should continue to review the possibility of the withdrawal of all its reservations to the Covenant.**

(6) While noting the constitutional amendments approved in 2003 whose provisions aim at clarifying the conditions governing the power of the Princely House to derogate from obligations under the Covenant, the Committee is concerned that these provisions do not conform to the requirements of article 4 of the Covenant, including the lack of a requirement to proclaim a state of emergency (art. 4).

> **The State party should bring the provisions governing the powers of derogation into conformity with all the requirements set out in article 4 of the Covenant.**

(7) While noting the numerous measures taken by the State party to address the problem of inequality between men and women, the Committee notes the persistence of a passive attitude in society towards the role of women in many areas, especially in public affairs. The Committee is also concerned about the compatibility with the Covenant of laws governing the succession to the throne (arts. 2, 3, 25 and 26).

> **The State party should continue to take effective measures, including by legislative amendments, to address inequality between men and women. It is encouraged to take measures designed to enhance the participation of women in Government and decision-making processes, and to further promote equality of men and women in non-public areas. While noting Liechtenstein's interpretive declaration concerning article 3 of the Covenant, the State party may wish to consider the compatibility of the State party's exclusion of women from succession to the throne with articles 25 and 26 of the Covenant.**

(8) The Committee regrets the persistence of domestic violence against women and children in the State party (arts. 3 and 7).

> **The State party should take all necessary measures to combat domestic violence, punish offenders and provide material and psychological relief to the victims.**

(9) While noting the measures taken by the State party to promote equality and integration of non-citizens, the Committee regrets that the principle of equality before the law for all the individuals under the State party's jurisdiction is only indirectly recognized in the Constitution. It is also concerned about the persistence of xenophobia and intolerance, especially against Muslims and people of Turkish origin (arts. 2 and 26).

> **The State party should consider amending the Constitution to ensure that the principle of equality before the law is guaranteed to all individuals under its jurisdiction. The State party should intensify its efforts to combat right-wing extremism and other expressions of xenophobia and religious intolerance.**

(10) The Committee notes with concern that the law on self-defence and the rules governing the use of firearms by law enforcement officials are not specific on the issue of proportionality as to their use of firearms (art. 6).

> **The State party should ensure that its law on self-defence and the provisions governing the use of force and firearms by law enforcement officials fully comply with the requirement of proportionality as reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

(11) The Committee is concerned about shortcomings in the protection of the rights of arrested persons and persons in pre-trial detention. It regrets that the Criminal Procedure Code does not require that persons in detention be informed of their rights to remain silent. It is also concerned about the scope of the right of an arrested or detained person to be brought promptly before a judge and to have access to legal assistance. Finally, it expresses concern about the justification of the rule allowing extensions of time for "imprisonment with restrictions" (arts. 9 and 14).

> **The State party should bring its domestic legislation into conformity with articles 9, paragraph 3, and 14, paragraph 3 (d), of the Covenant in relation to these concerns.**

(12) While noting that the constitutional amendments of 2003 sought to clarify the system of appointment and tenure of judges, the Committee is concerned about some elements of the new mechanism which may not be compatible with the principle of the independence of the judiciary (art. 14).

> **The State party should consider amending the mechanism for the appointment of judges to secure tenure, so as to guarantee fully the principle of the independence of the judiciary. The elements to be reviewed should include: the criteria for the appointment of members to the selecting body, the casting vote of the Princely House and the limited nature of tenure.**

(13) The Committee is concerned about the differential treatment of religious denominations in the allocation of public funds (arts. 2, 18 and 26).

> **The State party should review its policies in the allocation of public funds to religious denominations and ensure that all are assigned an equitable part of these funds.**

Dissemination of information about the Covenant (art. 2)

(14) The State party should widely disseminate the text of its initial report and the present concluding observations.

(15) The Committee requests the State party to provide, in its next periodic report, due for presentation on 1 August 2009, information concerning the recommendations made as well as further implementation of the Covenant.

74. Namibia

(1) The Committee considered the initial report of Namibia (CCPR/C/NAM/2003/1) at its 2200th, 2201st and 2202nd meetings (CCPR/C/SR.2200-2002), on 14 and 15 July 2004, and adopted the following concluding observations at its 2216th meeting (CCPR/C/SR.2216), on 26 July 2004.

Introduction

(2) The Committee welcomes the initial report of Namibia, although it regrets the delay of over eight years in its submission. The Committee encourages the State party to use the Committee's guidelines for the preparation of the next periodic report, and to include more factual information on the actual implementation of the Covenant.

Positive aspects

(3) The Committee notes the efforts made by the State party in establishing and developing democratic institutions since independence in 1990. The Committee commends the State party for doing so in a spirit of cooperation with non-governmental organizations and international bodies.

(4) The Committee commends the State party for having abolished, at the constitutional level, the death penalty for all crimes.

(5) The Committee welcomes the fact that the Constitution stipulates that general rules of international law and international agreements binding on the State party are part of the domestic law and appreciates the information on the use made by the State party's courts in recent cases concerning provisions of the Covenant.

Principal subjects of concern and recommendations

(6) The Committee is concerned that article 144 of the Constitution may negatively affect the full implementation of the Covenant at the domestic level.

> **The State party should reconsider the status of the Covenant vis-à-vis domestic law in order to ensure the effective implementation of the rights enshrined therein.**

(7) The Committee welcomes the establishment of the institution of the Ombudsman. It notes that the legislation concerning the Ombudsman requires further strengthening.

The State party should strengthen the legislative mandate of the institution of the Ombudsman and provide further resources to it, so that it may be in a position to fulfil its mandate efficiently.

(8) The Committee acknowledges the information provided by the State party on the implementation of its Views adopted under the Optional Protocol with regard to cases No. 760/1997 (*Diergaardt et al. v. Namibia*) and No. 919/2000 (*Müller and Engelhard v. Namibia*). It nevertheless notes with concern the absence of a mechanism to implement the Committee's Views adopted under the Optional Protocol.

The State party should establish a mechanism to implement the Committee's Views adopted under the Optional Protocol.

(9) The Committee welcomes the Married Persons Equality Act, which eliminates discrimination between spouses. It nevertheless remains concerned at the large number of customary marriages that are still not registered and about the consequent deprivation of women and children of their rights, in particular with regard to inheritance and land ownership.

The State party should take effective measures to encourage the registration of customary marriages and to grant the spouses and the children of registered customary marriages the same rights as are granted to the spouses and children of marriages under civil law. The future Bill on Intestate Inheritance and Succession and the future Bill on Recognition of Customary Law Marriages should take these considerations into account.

(10) The Committee appreciates the efforts undertaken by the State party to combat HIV/AIDS and to provide wider sexual education in this regard. However, these efforts are not adequate in view of the magnitude of the problem.

The State party should pursue its efforts to protect its population from HIV/AIDS. It should adopt comprehensive measures encouraging greater numbers of persons suffering from the disease to obtain adequate antiretroviral treatment and facilitating such treatment.

(11) The Committee notes with concern that the crime of torture is not defined in domestic criminal law and is still considered a common law offence to be charged like assault or *crimen injuria*.

The State party should, as a matter of priority, make torture a specific statutory crime.

(12) Although the Committee notes the decrease in reported violations of human rights in the northern parts of Namibia, it regrets that no extensive fact-finding initiatives have been undertaken to determine accountability for alleged acts of torture, extrajudicial killings and disappearances.

The State party should establish an effective mechanism for the investigation and punishment of such acts.

(13) The Committee appreciates the efforts undertaken by the State party in increasing the number of magistrates throughout the country, so as to ensure strict observance of the 48-hour rule for bringing a suspect before a trial judge. Nevertheless, it remains concerned that cases of prolonged pre-trial detention not compatible with article 9 of the Covenant may continue to occur.

> **The State party should continue its efforts to ensure respect of the 48-hour rule and should closely monitor all cases where this rule is not respected.**

(14) While the Committee takes note that, at present, magistrates are mandated to carry out independent inspections of detention centres, the Committee reiterates the need for an additional external and independent body mandated with the task of visiting the centres and receiving and investigating complaints emanating therefrom. A strong and independent mechanism is also required for the investigation of allegations of acts of police brutality in general.

> **The State party should consider establishing an independent body that would be able to visit all places of detention and conduct investigations into violations of rights and abuses in prisons and places of detention, and to investigate acts of police brutality in general.**

(15) The Committee takes note of the reports that certain media personnel and journalists have faced harassment and that these allegations have not been investigated either promptly or thoroughly by the competent authorities.

> **The State party should take appropriate steps to prevent threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and with the requisite thoroughness and that suitable action is taken against those responsible.**

(16) The Committee notes with appreciation the decision of the Supreme Court in *The State v. John Sikundeka Samboma and others* (known as the Caprivi treason trial) reaffirming the right of persons in Namibia to legal aid. However, the Committee is concerned that access to this right is not properly ensured in practice.

> **The State party should take measures to strengthen the implementation of the legal aid scheme and ensure the provision of legal aid to individuals entitled to receive it, in particular by increasing the availability of funds.**

(17) The Committee is concerned that the State party is not complying fully with the obligation to ensure the right to be tried without undue delay as enshrined in article 14, paragraph 3 (c), of the Covenant, especially taking into account the number of cases that remain pending.

> **The State party should take urgent steps to guarantee that trials take place within a reasonable period of time. Special measures should be taken to address the backlog of cases, in particular through the necessary increase in the number of judges.**

(18) The Committee expresses its concern about the absence of any mechanism or procedure for the removal of judges for misconduct.

> **The State party should establish an effective and independent mechanism and provide for a proper procedure for the impeachment and removal of judges found guilty of misconduct.**

(19) The Committee takes note of the draft Child Status Bill, aimed at enabling children born out of wedlock to have the same rights as those born within marriage. The Committee notes with concern, however, that children do not get the type of special protection that they require in the area of the administration of justice, in particular in the criminal justice system.

> **The State party should take measures to establish an appropriate juvenile criminal justice system in order to ensure that juveniles are treated in a manner commensurate with their age.**

(20) While the Committee commends the State party for the enactment of the Combating Domestic Violence Act, which criminalizes domestic violence, the Committee regrets that, despite the wide prevalence of domestic violence, so far only 62 persons have been prosecuted and no victims have been compensated.

> **The State party should encourage further use of this Act, especially by training the police force and sensitizing it to the needs of victims. Additional special shelters for those suffering from domestic violence should be created.**

(21) While the Committee notes the reason why the State party recognizes only one official language, it is concerned that those persons who do not speak the official language may be discriminated against in the administration of public affairs and in the administration of justice.

> **The State party should take measures to ensure, to the extent possible, that persons who only speak non-official languages used widely by the population are not denied access to public service. It should undertake measures to protect the use of such languages.**

(22) The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals.

> **The State party should consider, in enacting anti-discrimination legislation, introducing the prohibition of discrimination on the ground of sexual orientation.**

Dissemination of information about the Covenant

(23) The second periodic report should be prepared in accordance with the Committee's reporting guidelines and be submitted by 1 August 2008. The State party should pay particular attention to providing practical information on the implementation of legal standards existing in the country. The Committee requests that the text of the present concluding observations be published and disseminated throughout the country.

(24). In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 9 and 11. The Committee requests the State part provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

75. Serbia and Montenegro

(1) The Committee began its consideration of the initial report of Serbia and Montenegr (CCPR/C/SEMO/2003/1) at its 2206th to 2208th meetings (CCPR/C/SR.2206 and 2208), held on 19 and 20 July 2004, and adopted the following concluding observations at its 2221st meeting, held on 28 July 2004. Further consideration of the report in respect of Kos was adjourned to the eighty-second session of the Committee.

Introduction

(2) The Committee welcomes the initial report submitted by Serbia and Montenegro and expresses its appreciation for the frank and constructive dialogue with the State party delegation. It welcomes the detailed answers, both oral and written, that were provided to questions.

(3) The State party explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, ow the fact that civil authority is exercised in Kosovo by the United Nations Interim Administr Mission in Kosovo (UNMIK), the Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo. The Committee notes that, accordance with Security Council resolution 1244 (1999), Kosovo currently remains a part Serbia and Montenegro as successor State to the Federal Republic of Yugoslavia, albeit und interim international administration, and the protection and promotion of human rights is o the main responsibilities of the international civil presence (paragraph 11 (j) of the resolutio It also notes the existence of provisional institutions of self-government in Kosovo that are bound by the Covenant by virtue of article 3.2 (c) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. The Committee considers that the Covenant continues to remain applicable in Kosovo. It welcomes the off made by the State party to facilitate the consideration of the situation of human rights in Ko and encourages UNMIK, in cooperation with the Provisional Institutions of Self-Governme (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation human rights in Kosovo since June 1999.

Positive aspects

(4) The Committee welcomes the significant progress accomplished in legislative and institutional reform following the regime change in October 2000. It notes the adoption of Constitutional Charter forming the State Union of Serbia and Montenegro on 4 February 20 and welcomes in particular the adoption of the Charter on Human and Minority Rights and Liberties on 28 February 2003.

(5) The Committee further welcomes the adoption of, inter alia, the Codes of Criminal Procedure applicable at the Republic level, particularly the enhanced human rights protections of detainees; the amendment of the electoral law of Serbia in May 2004; the Law on the Protection of the Rights and Freedoms of National Minorities at the State Union level; and efforts to address the issue of discrimination against Roma in all social spheres.

(6) The Committee commends the State party for its abolition of the death penalty and its accession to the Second Optional Protocol to the Covenant.

(7) The Committee welcomes the establishment of Ombudsman institutions in Montenegro and the autonomous province of Vojvodina.

(8) The Committee has noted the cooperative spirit professed by the authorities of the State party vis-à-vis the participation of national non-governmental organizations in the process of monitoring, promoting and protecting the enjoyment of Covenant rights.

Principal subjects of concern and recommendations

(9) The Committee is concerned at the persistence of impunity for serious human rights violations, both before and after the changes of October 2000. Although the Committee appreciates the declared policy of the State party to carry out investigations and to prosecute perpetrators of past human rights violations, it regrets the scarcity of serious investigations leading to prosecutions and sentences commensurate with the gravity of the crimes committed (arts. 2, 6, 7).

The State party is under an obligation to investigate fully all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant during the 1990s and to bring to trial those persons who are suspected of involvement in such violations. The State party should also ensure that victims and their families receive adequate compensation for violations. Persons alleged to have committed serious violations should be suspended from official duties during the investigation of allegations and, if found guilty, dismissed from public service in addition to any other punishment.

(10) While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (arts. 2, 6).

The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation.

(11) The Committee notes the State party's public statements emphasizing its commitment to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in order to ensure that all persons suspected of grave human rights violations, including war crimes and

crimes against humanity, are brought to trial. However, it remains concerned at the State pa repeated failure to fully cooperate with ICTY, including with regard to the arrest of indictee (art. 2).

> **The State party should extend to ICTY its full cooperation in all areas, includin the investigation and prosecution of persons accused of having committed serio violations of international humanitarian law, and by apprehending and transfe those persons who have been indicted and remain at large, as well as granting I full access to requested documents and potential witnesses.**

(12) While welcoming the measures taken to establish a system for trying war crimes bef domestic courts, including the creation of a special war crimes trial chamber of the Belgrade District Court, and the establishment of the Office of a Special War Crimes Prosecutor, conc remains as to the absence of provisions in domestic legislation implementing the principle o command responsibility, the absence of an adequate system for witness protection, and the absence of investigators assigned solely to the prosecutor's office (arts. 2, 6, 7).

> **The State party should take all necessary measures to ensure that those respons for war crimes and crimes against humanity are brought to justice, to ensure th justice is carried out in a fair manner and to establish an adequate system for witness protection.**

(13) The Committee is concerned at the measures taken under the state of emergency, wh included substantial derogations from the State party's human rights obligations under the Covenant. The Committee notes the ruling of the Constitutional Court of Serbia of 8 July 2 declaring unconstitutional some of the measures derogating from the Covenant taken by the Republic of Serbia under the state of emergency, and steps taken to punish violations that ha occurred during this period and to provide compensation to all victims. Nevertheless, the Committee regrets that several concerns remain, particularly with regard to allegations of to of detainees in the context of "Operation Sabre" (arts. 4, 7, 9, 14, 19).

> **The State party should take immediate steps to investigate all allegations of tort during "Operation Sabre" and take all necessary steps to ensure adequate mechanisms to prevent such violations and any abuse of emergency powers in future. The Committee draws the attention of the State party to its general comment No. 29 for the assessment of the scope of emergency powers.**

(14) The Committee is concerned about continued allegations of ill-treatment of persons b law enforcement officials. It also notes the preliminary statement by the Committee against Torture, referred to in the initial report of the State party, to the effect that torture had been applied systematically in the Federal Republic of Yugoslavia prior to October 2000. The Committee is concerned that sufficient information has not been provided as to concrete step taken to investigate such cases, punish those responsible and provide compensation to victi (art. 7).

> **The State party should take firm measures to eradicate all forms of ill-treatmen by law enforcement officials, and to ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment, prosecu and punish perpetrators, and provide effective remedies to the victims.**

(15) While taking note of the establishment in Serbia of the Office of Inspector General of the Public Security Service in June 2003, the Committee is concerned that no independent oversight mechanism exists for investigating complaints of criminal conduct against members of the police, which could contribute to impunity for police officers involved in human rights violations (arts. 2, 7, 9).

> **The State party should establish independent civilian review bodies at the Republic level with authority to receive and investigate all complaints of excessive use of force and other abuse of power by the police.**

(16) The Committee notes that Serbia and Montenegro is a main transit route for trafficking in human beings and increasingly a country of origin and destination. It welcomes the efforts made by the State party and the measures taken to address the situation regarding trafficking in women and children, including the establishment of national teams to combat trafficking in Serbia and in Montenegro, as well as the introduction of a criminal offence in the criminal codes of Montenegro and of Serbia directed to trafficking in human beings, although some concerns regarding the definition of trafficking remain. The Committee is also concerned at the lack of effective witness protection mechanisms and notes the apparent lack of awareness about trafficking in women and children on the part of law enforcement officials, prosecutors and judges. The Committee notes that shelters and SOS hotlines are managed by non-governmental organizations, which have also organized awareness campaigns, and regrets the lack of adequate involvement by the authorities in these initiatives (arts. 3, 8, 24).

> **The State party should take measures to combat trafficking in human beings, which constitutes a violation of several Covenant rights, including articles 3 and 24 and the right under article 8 to be free from slavery and servitude. Strong measures should be taken to prevent trafficking and to impose sanctions on those who exploit women and children in this way. Protection should be extended to all victims of trafficking so that they may have a place of refuge and an opportunity to give evidence against the persons responsible in criminal or civil proceedings.**

(17) The Committee is concerned at reports of high rates of domestic violence. While noting the efforts made by the State party to combat domestic violence, particularly in the area of legislative reform, the Committee regrets the lack of statistics and detailed information provided on the nature and extent of the problem (arts. 3, 7, 26).

> **The State party should adopt the necessary policy and legal framework to effectively combat domestic violence. The Committee recommends in particular that the State party establish crisis-centre hotlines and victim support centres equipped with medical, psychological and legal support, including shelters for battered spouses and children. In order to raise public awareness, it should disseminate information on this issue through the media.**

(18) The Committee is concerned about the lack of full protection of the rights of internally displaced persons in Serbia and Montenegro, particularly with regard to access to social services in their places of actual residence, including education facilities for their children, and access to personal documents. It expresses its concern with regard to high levels of unemployment and

lack of adequate housing, as well as with regard to the full enjoyment of political rights. W noting the State party's view that internally displaced persons have equal status with other citizens of Serbia and Montenegro, the Committee is concerned at the lack of enjoyment of their rights in practice. The Committee notes that Roma from Kosovo displaced during the 1999 conflict are a particularly vulnerable group (arts. 12, 26).

> **The State party should take effective measures to ensure that all policies, strat programmes and funding support have as their principal objective the enjoym by all displaced persons of the full spectrum of Covenant rights. Furthermore, internally displaced persons should be afforded full and effective access to soci services, educational facilities, unemployment assistance, adequate housing an personal documents, in accordance with the principle of non-discrimination.**

(19) The Committee takes note of efforts undertaken by Serbia to strengthen the indepen of the judiciary. However, it is concerned at alleged cases of executive pressure on the jud in Serbia, and measures regarding the judiciary undertaken during the state of emergency (art. 14).

> **The State party should ensure strict observance of the independence of the judiciary.**

(20) The Committee is concerned at the possibility of civilians being tried by military co for crimes such as disclosure of State secrets (art. 14).

> **The State party should give effect to its aspiration to secure that civilians are n tried by military courts.**

(21) The Committee takes note of the information provided by the delegation whereby conscientious objection is governed by a provisional decree, which is to be replaced by a la which will recognize full conscientious objection to military service and an alternative civi service that will have the same duration as military service (art. 18).

> **The State party should enact the said law as soon as possible. The law should recognize conscientious objection to military service without restrictions (art. and alternative civil service of a non-punitive nature.**

(22) The Committee is concerned at the high number of proceedings initiated against journalists for media-related offences, in particular as a result of complaints filed by political personalities who feel that they have been subject to defamation because of their functions.

> **The State party, in its application of the law on criminal defamation, should ta into consideration on the one hand the principle that the limits for acceptable criticism for public figures are wider than for private individuals, and on the hand the provisions of article 19 (3), which do not allow restrictions to freedo expression for political purposes.**

(23) While noting the adoption of the Law on the Protection of the Rights and Freedoms of National Minorities, the Committee remains concerned that the practical enjoyment by members of ethnic, religious and linguistic minorities of their Covenant rights still requires improvement. In this context, the Committee notes the lack of a comprehensive non-discrimination legislation covering all aspects of distinction (arts. 2, 26, 27).

The State party should ensure that all members of ethnic, religious and linguistic minorities, whether or not their communities are recognized as national minorities, enjoy effective protection against discrimination and are able to enjoy their own culture, to practise and profess their own religion, and use their own language, in accordance with article 27 of the Covenant. In this context, the State party should enact comprehensive non-discrimination legislation, in order to combat ethnic and other discrimination in all fields of social life and to provide effective remedies to victims of discrimination.

(24) The Committee is concerned that widespread discrimination against the Roma persists with regard to all areas of life. The Committee is particularly concerned about the deplorable social and economic situation of the Roma minority, including access to health services, social assistance, education and employment which has a negative impact on the full enjoyment of their rights under the Covenant (arts. 2, 26, 27).

The State party should take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant, by urgently implementing all strategies and plans to address discrimination and the serious social situation of the Roma in Serbia and Montenegro.

(25) While noting reports about the decrease in police violence against Roma, the Committee continues to be concerned at violence and harassment by racist groups, and inadequate protection against racially motivated acts afforded by law enforcement officers (arts. 2, 20, 26).

The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to the Roma and other minorities, and establish mechanisms to receive complaints from victims and ensure investigation and prosecution of cases of racial violence and incitement to racial hatred, and ensure access to adequate remedies and compensation.

(26) The State party should widely publicize the present examination of its initial report by the Committee and, in particular, these concluding observations.

(27) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding cooperation with ICTY (para. 11); torture and ill-treatment (para. 14); and internally displaced persons (para. 18). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report, to be presented by 1 August 2008.

B. Provisional concluding observations adopted by the Committee on country situations in the absence of a report, and converted into public final conclud observations pursuant to rule 69A, paragraph 3, of the rules of procedure

76. Gambia*

(1) The Committee considered the situation of civil and political rights under the International Covenant on Civil and Political Rights in the Gambia in the absence of a per report at its 2023rd and 2024th meetings, on 15 and 16 July 2002 (CCPR/C/SR.2023 and At its 2035th meeting, held on 23 July 2002 (CCPR/C/SR.2035), it adopted the following provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure.

Introduction

(2) The Committee regrets that, in spite of the diplomatic note, dated 22 March 2002, addressed by the Permanent Mission of the Gambia to the Secretary-General of the United Nations, which was confirmed in writing by a further communication, dated 19 June 2002, that a high-level delegation would attend the hearing before the Committee delegation failed to appear. The Committee recalls that it had previously agreed to the St party's request for a deferral of consideration of the country situation, in the light of the S party's commitment to send a delegation. In these circumstances, the delegation's last-m indication that it would not be attending the session is a matter of serious concern. The Committee further regrets the State party's failure to honour its reporting obligations und article 40 of the Covenant, and that no report had been submitted to the Committee since April 1983 (CCPR/C/10/Add.7), despite numerous reminders. This failure amounts to a breach by the State party of its obligations under article 40 of the Covenant.

Positive aspect

(3) The Committee notes that the State party has facilitated visits by the International Committee of the Red Cross, the African Commission on Human and Peoples' Rights an latter's Special Rapporteur on Conditions of Detention, to the Mile Two State prison.

Principal subjects of concern and provisional observations

(4) While Chapter Four of the Constitution of the Gambia contains various provision are compatible with those of the Covenant, the Committee notes that many differences b the provisions of the Constitution and the Covenant remain, in particular in sections 19, and 35. The provisions of articles 10, 11, 13, 16 and 20 of the Covenant do not appear t equivalent provisions in the Constitution. The Committee is concerned that, generally, t application of the Constitution itself appears to be undermined by several decrees issued

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* Pursuant to rule 69A, paragraph 3, of its rules of procedure, the Committee decided t public the provisional concluding observations on the Gambia adopted and transmitted t State party during its seventy-fifth session.

Armed Forces Provisional Ruling Council (AFPRC), especially Decree No. 36 of April 1995, many of which remain in effect and which contradict both the Constitution and provisions of the Covenant.

The State party should bring its laws into conformity with the provisions of the Covenant.

(5) Schedule 2, section 13, of the Constitution in effect grants retroactive immunity to the members of the Armed Forces Provisional Revolutionary Council (AFPRC). This situation is incompatible with article 2 of the Covenant, which enshrines the right to an effective remedy.

The State party should repeal Schedule 2, section 13, of the Constitution.

(6) The Committee remains concerned over the adoption of the Indemnity Amendment Act, 2001, which effectively granted immunity from prosecution to members of the security forces who were involved in the break-up of the demonstrations of April 2000 in Banjul and Brikama.

The State party should repeal the 2001 Indemnity Amendment Act, whose provisions are contrary to article 2 of the Covenant, and allow the constitutional challenge to the Act, now before the Gambian courts, to proceed.

(7) The Committee expresses concern over allegations about the resort to excessive and sometimes lethal force by the security forces, notably during the break-up of student demonstrations in Banjul, Brikama and other cities in April 2000 and during the presidential electoral campaign in autumn 2001. It is further concerned by reports of a significant number of extrajudicial executions committed by the security forces since 1995.

The State party should investigate allegations of instances of excessive use of force, especially use of lethal force and extrajudicial executions by the security forces, without delay and bring to justice those found responsible for such acts. The security forces must be instructed to act in ways compatible with articles 6 and 7 of the Covenant.

(8) In the light of article 6, paragraph 6, of the Covenant, the Committee notes with concern that the death penalty was reintroduced in August 1995, after its abolition in 1993. It appears that Gambian law does not prohibit the death penalty for crimes committed by persons under the age of 18. It is not clear that all crimes presently carrying the death penalty qualify as the "most serious crimes" within the meaning of article 6, paragraph 2. The Committee further notes with concern that several death sentences have been imposed in recent years, although they were apparently not carried out.

The State party should provide to the Committee detailed information on the crimes for which capital punishment may be imposed, the number of death sentences handed down since 1995, and the number of prisoners currently detained on death row.

(9) The Committee expresses serious concern over numerous allegations of torture and ill-treatment, particularly during periods of incommunicado detention, in violation of articles 7 and 10 of the Covenant.

> **All allegations of ill-treatment and torture in custody must be investigated promptly by an independent body, and those held to be accountable for such acts should face appropriate sanctions/prosecution.**

(10) The Committee expresses its concern over the fact that female genital mutilation continues to be practised widely in the State party's territory, notwithstanding the adoption of the First National Action Plan for the Eradication of Female Genital Mutilation (FGM) in March 1997. The Committee reaffirms that the practice of FGM is contrary to article 7 of the Covenant.

> **The State party should take prompt legal and educational measures to combat the practice of female genital mutilation. Rather than censoring radio and television broadcasts designed to combat the practice of FGM, such broadcasts should be reinstated and encouraged.**

(11) According to information brought to the Committee's attention, numerous members of the political opposition, independent journalists and human rights defenders have been subjected to arbitrary arrest and periods of detention of varying length without charges. In many instances these actions have been carried out by the National Intelligence Agency (NIA) in application of decrees issued by the AFPRC that legitimize the practice of detention without trial and charges. The Committee is further informed that NIA continues to practice incommunicado detention. This practice is contrary to article 9 of the Covenant.

> **The State party should ensure that all those arrested and detained are either properly charged and brought to trial without delay or released. Those who have been subjected to measures of arbitrary arrest and detention should be afforded an appropriate judicial remedy, including compensation.**

(12) According to information before the Committee, conditions of detention at Mile Two prison are not compatible with article 10 of the Covenant, and certain categories of prisoners, especially political prisoners, are subjected to particularly harsh treatment contrary to article 7 of the Covenant.

> **The State party should provide detailed information about the conditions of detention in Mile Two prison and ensure that conditions of detention conform to articles 7 and 10 of the Covenant, as well as to the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

(13) The Committee regrets that it did not have before it the Code of Criminal Procedure. It notes, however, that Decree No. 45 (1995) and Decree No. 66 (1996) of the Armed Forces Provisional Ruling Council (AFPRC), extending the period of detention up to 90 days and which remain in force, are neither compatible with the constitutional provisions governing arrest and detention (sections 19 (2) and (3) of the Constitution), nor with the Covenant (art. 9).

The State party should repeal Decrees Nos. 45 and 66. It is requested to provide information on whether the constitutional provision under which any arrested person must be produced before a judge or judicial officer as soon as possible or within 72 hours of arrest at the latest is in fact consistently applied in practice. The Committee considers that the delay of 72 hours is difficult to reconcile with article 9, paragraph 3, of the Covenant.

(14) The Committee notes with concern that detainees who are opposed to the Government and who face criminal charges do not always benefit from all guarantees of a fair trial, and that some have been tried before military courts, for which no constitutional provision exists. It further regrets that, in spite of the constitutional provision for security of tenure of judges, judges have reportedly been removed summarily from office in several instances.

The State party should afford to all those facing criminal charges trials in full conformity with the Covenant. It is invited to guarantee the security of tenure of judges. The State party is further invited to explain the basis for the establishment and operation of military courts, and whether the operation of these military courts is in any way linked to the existence of a state of emergency.

(15) The Committee is concerned that the State party has withdrawn the passports of several members of the political opposition to prevent them from leaving the country.

The State party should respect the rights guaranteed under article 12 of the Covenant.

(16) The Committee expresses its concern about systemic discrimination against women:

(a) Section 33, subsections 5 (c) and (d), of the Constitution derogate from the general principle of non-discrimination; the girl child is discriminated against in respect of education; women are discriminated against in matters pertaining to divorce, which is only permitted under rare circumstances; there is further discrimination against women in inheritance matters;

(b) The participation of women in political life, and in public and private sector employment, is particularly inadequate, on the basis of the information before the Committee;

(c) There appear to be no appropriate laws to protect women against domestic violence.

The State party should take appropriate measures to ensure that domestic laws (including decrees) and customary law, as well as certain aspects of the Shariah, are interpreted and applied in ways compatible with the provisions of the Covenant. It should ensure the equality of women with men, both in education and employment.

(17) The Committee is concerned that the criminalization of abortion, even when pregnancy threatens the life of the mother or results from rape, leads to unsafe abortions, which contributes to a high rate of maternal mortality. The Committee regrets the absence of information from the State party on the provision of health services to women, especially in relation to reproductive health and family planning.

> **The State party recommends that the law be amended so as to introduce exceptions to the general prohibition of abortions.**

(18) The Committee remains concerned about the persistence and the extent of the practice of polygamy, and the different ages for marriage between boys and girls.

> **The State party should ensure that the practice of polygamy is discouraged. It should amend its laws that permit early marriages of boys and girls, at different ages.**

(19) The Committee considers that legislation passed in May 2002, creating a National Media Commission vested with the power to order the detention of journalists and to impose heavy fines on journalists, is incompatible with articles 9 and 19 of the Covenant. The Commission's procedure for the licensing of journalists is equally incompatible with article 19.

> **The State party is invited to review the above-mentioned legislation, with a view to bringing it into conformity with the provisions of articles 9 and 19 of the Covenant.**

(20) While noting the constitutional protection of the right to freedom of expression, the Committee expresses concern that numerous journalists have been subjected to intimidation, harassment, and occasionally to detention without charges, for having published material critical of the Government. The resort to libel and defamation charges against journalists for similar reasons is equally cause for concern (article 19 of the Covenant).

> **The State party should guarantee the freedom of expression and opinion of the independent media. Journalists who have been subjected to measures of arbitrary detention should be afforded effective judicial redress and compensation.**

(21) In the Committee's opinion, the closure of independent radio stations, as well as the possibility, under Decree No. 71 (1996), to impose heavy fines on independent newspapers that do not register annually as required under the 1994 Newspaper Act and pay the registration bond payable pursuant to Decree No. 70 (1996), is indicative of unjustifiable restrictions on freedom of thought and expression and of a pattern of harassment of independent media.

> **The State party should reconsider the system for registration of independent newspapers and repeal Decrees Nos. 70 and 71, to bring its regulation of the print media into conformity with article 18 and article 19 of the Covenant.**

(22) The Committee is concerned that the right to freedom of assembly is subject to limitations that go beyond what is permissible under article 21 of the Covenant and that such limitations, including denial of authorization to hold meetings, are targeted in particular at the political opposition to the Government.

> **The State party should ensure full respect for the provisions of article 21, and should do so on a non-discriminatory basis.**

(23) While Decree No. 89 (1996), which banned political party activity, was abrogated in July 2001, the Committee notes with concern that political parties opposed to the Government are routinely disadvantaged and discriminated against in their activities, for example by denial or serious limitation of the possibility of radio or television broadcasts.

> **The State party should treat all political parties equally and provide them with equal opportunities for the pursuit of their legitimate activities, in line with the provisions of articles 25 and 26 of the Covenant.**

(24) In the light of information on the plurality of ethnic groups, religions and languages in the Gambia, the Committee is concerned over the State party's contention, expressed during the consideration of its initial report, that there were no minorities in the Gambia.

> **The State party is invited to report on measures taken to implement article 27 of the Covenant.**

(25) The Committee invites the State party to provide its replies to the concerns raised in the present provisional concluding observations by 31 December 2002. In this regard, the Committee encourages the State party to solicit technical cooperation from the appropriate United Nations organs, in particular the Office of the United Nations High Commissioner for Human Rights, to assist it in meeting its reporting obligations under the Covenant.

77. Equatorial Guinea*

(1) The Committee considered the situation of civil and political rights under the International Covenant on Civil and Political Rights in Equatorial Guinea in the absence of a periodic report at its 2147th meeting, held on 27 October 2003 (CCPR/C/SR.2147). At its 2160th and 2162nd meetings, held on 4 and 5 November 2003 (CCPR/C/SR.2160 and CCPR/C/SR.2162), it adopted the following provisional concluding observations pursuant to rule 70, paragraph 1, of its rules of procedure.

Introduction

(2) The Committee regrets that the State party has failed to honour its reporting obligations under article 40 of the Covenant and that, despite numerous reminders, not a single report has been submitted to it, not even the initial report, which should have been submitted in 1988. This

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* Pursuant to rule 70 of its rules of procedure, the Human Rights Committee has decided to publish the provisional concluding observations on Equatorial Guinea that it adopted and transmitted to the State party at its seventy-ninth session.

amounts to a serious breach by the State party of its obligations under article 40 of the Covenant. The Committee likewise regrets that, although notice was given of the hearing before the Committee, no delegation from the State party attended it.

Principal subjects of concern and provisional observations

(3) The Committee expresses its concern at the substantiated accusations of systematic torture and ill-treatment in the State party and at the use of statements and confessions obtained through torture.

> **The State party should take all necessary steps to ensure the protection due to everyone against the acts prohibited by article 7 of the Covenant. It should also put an end to the culture of impunity from which the perpetrators of such violations benefit and guarantee that all cases of the kind in question will be investigated with a view to bringing suspects before the courts, punishing the culprits and indemnifying the victims. Lastly, it should respect the standards set forth in article 14 of the Covenant and ensure that no statement or confession made under torture can be used in evidence.**

(4) The Committee welcomes the commutation of 15 death sentences handed down in 1998. Nonetheless, it expresses its concern at the fact that the death penalty remains in force.

> **The Committee encourages the State party to take the necessary legislative action to abolish the death penalty and guarantee the right to life (article 6 of the Covenant).**

(5) The Committee is concerned at reports of illegal detention and of the existence of semi-clandestine detention centres such as those in the National Gendarmerie "barracks" at Bata and at the shortcomings of the system for recording admissions and releases of detainees.

> **The State party should take the steps necessary to guarantee the application of article 9 of the Covenant. Accordingly, it should order an end to the practice of illegal detention. In addition, detainees should be held in officially recognized places of detention and the authorities should keep orderly, up-to-date registers of admissions and releases of detainees.**

(6) The Committee observes with alarm the poor conditions in detention facilities, especially those under the control of the military authorities. It is also concerned at the practice of imposing forced labour on the inmates of the various detention facilities.

> **The State party should ensure that all the provisions of article 10 of the Covenant are fully respected in prisons and other detention facilities.**

(7) The Committee expresses its concern at the absence of an independent judiciary in the State party and at the conditions for the appointment and dismissal of judges, which are not such as to guarantee the proper separation of the executive and the judiciary. It is also concerned that, in an infringement of the powers of the judiciary, trials are being conducted by the House of Representatives of the People. The Committee also regrets the absence of safeguards to ensure that civilians are tried solely by civilian courts and not by military tribunals.

Bearing in mind article 14 of the Covenant, the State party should take steps to safeguard in practice the judiciary's independence and its role as the sole administrator of justice and to guarantee the competence, independence and tenure of judges. In addition, the State party should restrict the jurisdiction of the military justice system, removing civilians from it.

(8) The Committee expresses its concern at the discrimination against women in the country's political, social and economic life. It notes that women are imprisoned if they do not return their dowries on separating from their husbands, that custody of the children is given to the husband in the event of divorce and that joint paternity is not recognized.

The State party should, by virtue of articles 3, 23, paragraph 4, and 26, take steps to promote the enjoyment by women of all the civil and political rights set forth in the Covenant. It should, because the practice is contrary to article 11 of the Covenant, put an end to the imprisonment of women who do not return their dowries when they separate from their husbands.

(9) The Committee expresses concern that legal restrictions on the availability of family planning services give rise to high rates of pregnancy and illegal abortion, which are one of the principal causes of maternal mortality.

The State party should do away with the legal restrictions on family planning so as to reduce maternal mortality (articles 23, 24 and 6 of the Covenant).

(10) The Committee notes with concern the lack of protection for children, whether indigenous or from neighbouring countries, in the areas of health, work and education, as borne out in the latter field by the low levels of education, the repeater and dropout rates and the low tax expenditure per pupil. It is also concerned by the corporal punishment inflicted on children, allegedly as a remedial measure, and by the prostitution of young girls.

The State party should, in conformity with articles 24 and 7 of the Covenant, put into practice child-protection programmes in the above-mentioned areas.

(11) The Committee notes with alarm that Act No. 1 of 1999 governing the operation of non-governmental organizations has not yet been amended, because it does not provide for human rights organizations. It also remarks with concern that a number of associations, such as the Press Association of Equatorial Guinea (ASOPGE) and the Bar Association, are said to have been banned without good reason. Lastly, it takes note with concern of the lack of trade unions in the State party.

The State party should take all necessary steps to guarantee the rights of assembly and association, especially the right to form trade unions (arts. 19, 21 and 22). It should amend Act No. 1 of 1999 to permit the registration and operation of non-governmental human rights organizations and allow the Press Association of Equatorial Guinea (ASOPGE) and the Bar Association to operate without hindrance.

(12) While the Committee has taken note of the introduction of a multi-party system and of the adoption of the National Pact between the Government and the authorized political parties, it regrets the continuing harassment of political opponents through, inter alia, detentions, fines and difficulty in finding employment or leaving the country to attend meetings abroad, for example. It also notes with concern that political parties opposed to the Government are discriminated against, and that some have apparently even had difficulty in registering. Lastly, the Committee notes with alarm the irregularities during the latest elections held in the State party, culminating in the withdrawal of all the opposition candidates.

> **The State party should, in accordance with articles 25 and 26 of the Covenant, treat all political parties equally and give them all the same opportunities to carry out their lawful activities. In addition, it should, in observance of the right set forth in article 25 of the Covenant, guarantee the free expression of the electorate's will through universal and equal suffrage and secret balloting.**

(13) The Committee regrets that, according to reports of numerous military roadblocks, the requirement to obtain a visa to leave the State party and the practice of internal political exile, the right to freedom of movement is still restricted.

> **The State party should, in conformity with the provisions of articles 9, 12 and 25 of the Covenant, guarantee the freedom of circulation recognized in article 12 of the Covenant by doing away with all military roadblocks or taking steps to prevent their being used as a means of extortion, by repealing the requirement to obtain a visa to leave the country and by abolishing the practice of internal political exile.**

(14) The Committee expresses concern at reports of discrimination against and persecution of the country's minority ethnic groups, in particular the Bubi.

> **The State party should, in conformity with articles 26 and 27 of the Covenant, take all necessary steps to guarantee the right to equality of all ethnic groups.**

(15) The Committee encourages the State party to solicit technical cooperation from the appropriate United Nations organs, in particular the Office of the United Nations High Commissioner for Human Rights, to assist it in meeting its reporting obligations under the Covenant.

(16) The Committee requests the State party to submit its initial report by 1 August 2004.

CHAPTER V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

78. Individuals who claim that any of their rights under the International Covenant on Civil and Political Rights have been violated by a State party, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 153 States that have ratified, acceded or succeeded to the Covenant, 104 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, section B). Since the last annual report, three States (Timor-Leste, Turkey and Swaziland) became parties to the Covenant, while the number of States parties to the Optional Protocol remained unchanged. Moreover, under article 12, paragraph 2, of the Optional Protocol, the Committee is still considering communications from one State party (Trinidad and Tobago) that denounced the Optional Protocol, in 2000.

79. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (article 5, paragraph 3, of the Optional Protocol). Under rule 96 of the Committee's rules of procedure, all working documents issued for the Committee are confidential unless the Committee decides otherwise. However, the author of a communication and the State party concerned may make public any submissions or information bearing on the proceedings, unless the Committee has requested the parties to respect confidentiality. The Committee's final decisions (Views, decisions declaring a communication inadmissible, decisions to discontinue a communication) are made public; the names of the authors are disclosed unless the Committee decides otherwise.

80. Communications addressed to the Human Rights Committee are processed by the Petitions Unit of OHCHR. This Unit services the communications procedures under article 22 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

A. Progress of work

81. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 1,300 communications concerning 77 States parties have been registered for consideration by the Committee, including 103 registered during the period covered by the present report.

82. The status of the 1,300 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by Views under article 5, paragraph 4, of the Optional Protocol: 473, including 370 in which violations of the Covenant were found;

(b) Declared inadmissible: 366;

(c) Discontinued or withdrawn: 182;

(d) Not yet concluded: 279.

In addition, the Petitions Unit received several hundred communications in respect of which complainants were advised that further information would be needed before their communications could be registered for consideration by the Committee. The authors of more than 5,300 letters were informed that their cases will not be submitted to the Committee, for example, because they fall clearly outside the scope of application of the Covenant or of the Optional Protocol. A record of this correspondence is kept in the secretariat and reflected in the secretariat's database. The Special Rapporteur on new communications will register a number of these communications upon receipt of additional information and clarifications.

83. During the seventy-ninth to eighty-first sessions, the Committee concluded consideration of 37 cases by adopting Views thereon. These are cases Nos. 712/1996 (*Smirnova v. Russian Federation*), 793/1998 (*Pryce v. Jamaica*), 797/1998 (*Lobban v. Jamaica*), 798/1998 (*Howell v. Jamaica*), 811/1998 (*Mulai v. Republic of Guyana*), 815/1998 (*Dugin v. Russian Federation*), 867/1999 (*Smartt v. Republic of Guyana*), 868/1999 (*Wilson v. The Philippines*), 888/1999 (*Telitsin v. Russian Federation*), 904/2000 (*Van Marcke v. Belgium*), 909/2002 (*Kankanamge v. Sri Lanka*), 910/2000 (*Randolph v. Togo*), 911/2000 (*Nazarov v. Uzbekistan*), 917/2000 (*Arutyunyan v. Uzbekistan*), 920/2000 (*Lovell v. Australia*), 926/2000 (*Shin v. Republic of Korea*), 927/2000 (*Svetik v. Belarus*), 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*), 943/2000 (*Guido Jacobs v. Belgium*), 962/2001 (*Mulezi v. Democratic Republic of the Congo*), 964/2001 (*Saidov v. Tajikistan*), 976/2001 (*Derksen v. The Netherlands*), 1002/2001 (*Wallman v. Austria*), 1006/2001 (*Martínez Muñoz v. Spain*), 1011/2001 (*Madafferi v. Australia*), 1015/2001 (*Perterer v. Austria*), 1033/2001 (*Nallaratnam v. Sri Lanka*), 1051/2002 (*Ahani v. Canada*), 1060/2002 (*Deisl v. Austria*), 1069/2002 (*Bakhtiyari v. Australia*), 1080/2002 (*Nicholas v. Australia*), 1090/2002 (*Rameka v. New Zealand*), 1096/2002 (*Kurbanova v. Tajikistan*), 1117/2002 (*Khomidov v. Tajikistan*), 1136/2002 (*Borzov v. Estonia*), 1160/2003 (*G. Pohl et al. v. Austria*) and 1167/2003 (*Ramil Rayos v. The Philippines*). The text of these Views is reproduced in annex IX.

84. The Committee also concluded consideration of 26 cases by declaring them inadmissible. These are cases Nos. 697/1996 (*Aponte Guzmán v. Colombia*), 842/1998 (*Romanov v. Ukraine*), 870/1999 (*H.S. v. Greece*), 874/1999 (*Kuznetsov v. Russian Federation*), 901/1999 (*Laing v. Australia*), 961/2000 (*Everett v. Spain*), 970/2001 (*Fabrikant v. Canada*), 977/2001 (*Brandsma v. The Netherlands*), 990/2001 (*Irschik v. Austria*), 999/2001 (*Dichtl et al. v. Austria*), 1003/2001 (*P.L. v. Germany*), 1008/2001 (*Hoyos v. Spain*), 1019/2001 (*Barcaiztegui v. Spain*), 1024/2001 (*Sanles Sanles v. Spain*), 1040/2001 (*Romans v. Canada*), 1045/2002 (*Baroy v. The Philippines*), 1074/2002 (*Navarra Ferragut v. Spain*), 1084/2002 (*Bochaton v. France*), 1106/2002 (*Palandjian v. Hungary*), 1115/2002 (*Petersen v. Germany*), 1138/2002 (*Arenz v. Germany*), 1179/2003 (*Ngambi v. France*), 1191/2003 (*Hruska v. Czech Republic*), 1214/2003 (*Vlad v. Germany*), 1239/2004 (*Wilson v. Australia*) and 1272/2004 (*Benali v. The Netherlands*). The text of these decisions is reproduced in annex X.

85. Under the Committee's rules of procedure, the Committee will normally decide on the admissibility and merits of a communication together. Only in exceptional circumstances will the Committee request a State party to address admissibility only. A State party which has received a request for information on admissibility and merits may, within two months, object to

admissibility and apply for separate consideration of admissibility. Such a request, however, will not release the State party from the requirement to submit information on the merits within the fixed time limit, unless the Committee, its Working Group or its designated Special Rapporteur decides to extend the time for submission of information on the merits until after the Committee has ruled on admissibility.

86. During the period under review, three communications were declared admissible for examination on the merits. Decisions declaring communications admissible are not normally published by the Committee. Procedural decisions were adopted in a number of pending cases (under article 4 of the Optional Protocol or under rules 86 and 91 of the Committee's rules of procedure). The Committee requested the secretariat to take action in other pending cases.

87. The Committee decided to close the file of six cases following withdrawal by the author and/or counsel (cases Nos. 799/1998 (*Adams v. Jamaica*), 1137/2002 (*Maskos and Gunther Luken v. Portugal*), 1176/2003 (*Chaussat v. France*) and 1236/2003 (*Trevor Foster v. Barbados*)) or the death of the author (cases Nos. 1032/2001 (*Kleckowski v. Lithuania*) and 1144/2002 (*Simonov v. Russian Federation*)) and to discontinue the consideration of 12 communications, because, firstly, contact with the author was lost (cases Nos. 686/1996 (*Tereshin v. Russian Federation*), 783/1997 (*Tyagai v. Ukraine*), 795/1998 (*Heath v. Jamaica*), 817/1998 (*Lewis v. Trinidad and Tobago*), 955/2000 (*Piwowarczyk v. Poland*), 957/1999 (*Krca v. Czech Republic*) and 1216/2003 (*Yentürk v. Germany*)), secondly, the author and/or counsel failed to respond despite repeated reminders (cases Nos. 648/1995 (*Golovko v. Ukraine*), 843/1998 (*Nazarov v. Russian Federation*), 863/1999 (*Juan Tomás García Andrés v. Spain*) and 1137/2002 (*Maskos and Gunther Luken v. Portugal*)), and thirdly, the Committee's jurisdiction could not be established (case No. 1026/2001 (*Trotman v. Trinidad and Tobago*)).

B. Growth of the Committee's caseload under the Optional Protocol

88. As the Committee has stated in previous reports, the increasing number of States parties to the Optional Protocol and better public awareness of the procedure have led to a growth in the number of communications submitted to the Committee. The table below sets out the pattern of the Committee's work on communications over the last seven calendar years to 31 December 2003.

Communications dealt with, 1997-2003

Year	New cases registered	Cases concluded[a]	Pending cases at 31 December
2003	88	89	277
2002	107	51	278
2001	81	41	222
2000	58	43	182
1999	59	55	167
1998	53	51	163
1997	60	56	157

[a] Total number of all cases decided (by the adoption of Views, inadmissibility decisions and cases discontinued).

C. Approaches to considering communications under the Optional Protocol

1. Special Rapporteur on new communications

89. At its thirty-fifth session, in March 1989, the Committee decided to designate a special rapporteur authorized to process new communications as they were received, i.e. between sessions of the Committee. At the Committee's seventy-first session, in March 2001, Mr. Scheinin was designated as the new Special Rapporteur. In the period covered by the present report, the Special Rapporteur transmitted 103 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the questions of admissibility and merits. In 32 cases, the Special Rapporteur issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. The competence of the Special Rapporteur to issue and, if necessary, to withdraw, requests for interim measures under rule 86 of the rules of procedure is described in the annual report for 1997.[1]

2. Competence of the Working Group on Communications

90. At its thirty-sixth session in July 1989, the Committee decided to authorize the Working Group on Communications to adopt decisions declaring communications admissible when all five members so agreed. Failing such agreement, the Working Group refers the matter to the Committee. It also does so whenever it believes that the Committee itself should decide the question of admissibility. While the Working Group cannot adopt decisions declaring communications inadmissible, it makes recommendations in that respect to the Committee. It should be noted that during the period in question, three communications were declared admissible by the Working Group on Communications.

91. At its fifty-fifth session, in October 1995, the Committee decided that each communication would be entrusted to a member of the Committee, who would act as rapporteur for it in the Working Group and in the plenary Committee. The role of the rapporteur is described in the report for 1997.[2]

92. It should be noted that at the eighty-first session, the meeting time of the Working Group on Communications was used by the plenary and devoted to the examination of communications in order to reduce the backlog. Furthermore, at the eighty-first session, on 23 July 2004, the Human Rights Committee took a decision on the working methods under the Optional Protocol with a view to improving the procedure for the consideration of communications (see annex VIII).

D. Individual opinions

93. In its work under the Optional Protocol, the Committee seeks to adopt decisions by consensus. However, pursuant to rule 98 (formerly rule 94, paragraph 4) of the Committee's rules of procedure, members can add their individual (concurring or dissenting) opinions to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible (formerly rule 92, paragraph 3).

94. During the period under review, individual opinions were appended to the Committee's Views in 13 cases: Nos. 798/1998 (*Howell v. Jamaica*), 867/1999 (*Smartt v. Guyana*), 910/2000 (*Randolph v. Togo*), 920/2000 (*Lovell v. Australia*), 927/2000 (*Svetik v. Belarus*), 943/2000 (*Guido Jacobs v. Belgium*), 976/2001 (*Derksen v. The Netherlands*), 1006/2001 (*Martínez Muñoz v. Spain*), 1011/2001 (*Madafferi v. Australia*), 1051/2002 (*Ahani v. Canada*), 1069/2002 (*Bakhtiyari v. Australia*), 1090/2002 (*Rameka v. New Zealand*) and 1167/2003 (*Ramil Rayos v. The Philippines*). Individual opinions were appended with respect to decisions to declare three communications inadmissible: 901/1999 (*Lain v. Australia*), 1008/2001 (*Hoyos v. Spain*) and 1019/2001 (*Barcaiztegui v. Spain*).

E. Issues considered by the Committee

95. A review of the Committee's work under the Optional Protocol from its second session in 1977 to its seventy-eighth session in July 2003 can be found in the Committee's annual reports for 1984 to 2003, which contain summaries of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the Views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol are reproduced in annexes to the Committee's annual reports to the General Assembly. The texts of the Views and decisions are also available on the treaty body database of the OHCHR web site (www.unhchr.ch).

96. Three volumes of "Selected Decisions of the Human Rights Committee under the Optional Protocol", from the second to the sixteenth sessions (1977-1982), from the seventeenth to the thirty-second sessions (1982-1988), and from the thirty-third to the thirty-ninth sessions (1980-1990) have been published (CCPR/C/OP/1, 2 and 3). Following delays, volume 4 of the Selected Decisions, covering the period from the fortieth to the forty-sixth sessions (1990-1992), is expected to be issued in autumn 2004. In addition, it has been decided that the series of Selected Decisions will be brought up to date by the end of 2005. As domestic courts increasingly apply the standards contained in the International Covenant on Civil and Political Rights, it is imperative that the Committee's decisions be available on a worldwide basis in a properly compiled and indexed volume.

97. The following summary reflects further developments concerning issues considered during the period covered by the present report. It should be noted that in order to reduce the length of the Human Rights Committee's report, only the most significant decisions have been covered.

1. Procedural issues

(a) Reservations and interpretative declarations

98. In cases Nos. 990/2001 (*Irschik v. Austria*), 1002/2001 (*Wallmann v. Austria*) and 1060/2002 (*Deisl v. Austria*), the Committee considered the reservation made by Austria to article 5 of the Optional Protocol and according to which "the Committee … shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms".

99. In case No. 1002/2001 (*Wallmann v. Austria*), the Committee considered:

> "The Committee notes that the State party has invoked its reservation under article 5, paragraph 2 (a), of the Optional Protocol, which precludes the Committee from considering claims if the 'same matter' has previously been examined by the 'European Commission on Human Rights'. As to the authors' argument that the first author's application to the European Commission was, in fact, never examined by that organ but declared inadmissible by the European Court of Human Rights, the Committee observes that the European Court, as a result of treaty amendment by virtue of Protocol No. 11, has legally assumed the former European Commission's tasks of receiving, deciding on the admissibility of, and making a first assessment on the merits of applications submitted under the European Convention. The Committee recalls that, for purposes of ascertaining the existence of parallel or, as the case may be, successive proceedings before the Committee and the Strasbourg organs, the new European Court of Human Rights has succeeded to the former European Commission by taking over its functions .
>
> "The Committee considers that a reformulation of the State party's reservation, upon re-ratification of the Optional Protocol, as suggested by the authors, only to spell out what is in fact a logical consequence of the reform of the European Convention mechanisms, would be a purely formalistic exercise. For reasons of continuity and in the light of its object and purpose, the Committee therefore interprets the State party's reservation as applying also to complaints which have been examined by the European Court .
>
> "As to the question of whether the subject matter of the present communication is the same matter as the one examined by the European Court, the Committee recalls that the same matter concerns the same authors, the same facts and the same substantive rights. The first two requirements being met, the Committee observes that article 11, paragraph 1, of the European Convention, as interpreted by the Strasbourg organs, is sufficiently proximate to article 22, paragraph 1, of the Covenant now invoked, to conclude that the relevant substantive rights relate to the same matter.
>
> "With respect to the authors' argument that the European Court has not 'examined' the substance of the complaint when it declared the first author's application inadmissible, the Committee recalls its jurisprudence that where the European Commission has based a declaration of inadmissibility not solely on procedural grounds , but on reasons that include a certain consideration of the merits of the case, then the same matter has been 'examined' within the meaning of the respective reservations to article 5, paragraph 2 (a), of the Optional Protocol . The Committee is satisfied that the European Court went beyond an examination of purely procedural admissibility criteria when declaring the first author's application inadmissible, because it did 'not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols'.
>
> "The Committee notes that, the authors, based on the reference in the European Court's decision to the letter of the European Commission's Secretariat, explaining the possible obstacles to admissibility, argue that the application was declared inadmissible *ratione materiae* with article 11 of the Convention, and that it has therefore not been

> 'examined' within the meaning of the Austrian reservation. However, it cannot be ascertained, in the present case, on exactly which grounds the European Court dismissed the first author's application when it declared it inadmissible under article 35, paragraph 4, of the Convention … .
>
> "Having concluded that the State party's reservation applies, the Committee concludes that the communication is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, insofar as the first author is concerned, since the same matter has already been examined by the European Court of Human Rights.
>
> "The Committee observes that the examination of the application by the European Court did not concern the second author, whose communication, moreover, relates to different facts than the first author's application to the European Commission, namely the imposition of membership fees by the Salzburg Regional Chamber after she had become a partner of the limited partnership as well as a shareholder of the limited liability company in December 1999. The State party's reservation does not therefore apply insofar as the second author is concerned" (annex IX, sect. W, paras. 8.2-8.8).

100. In cases Nos. 1115/2002 (*Petersen v. Germany*) and 1138/2002 (*Arenz v. Germany*), the Committee considered the reservation made by Germany to article 5, paragraph 2 (a), of the Optional Protocol and according to which "the competence of the Committee shall not apply to communications (a) which have already been considered under another procedure of international investigation or settlement, or (b) by means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany, or (c) by means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant".

101. In case No. 1138/2002 (*Arenz v. Germany*), the Committee considered:

> "The Committee has noted the author's allegations, as well as the State party's challenge to the admissibility of the communication, namely that the events complained of by the authors had their origin in the adoption by the CDU National Party Convention of resolution C 47 on 17 December 1991, prior to the entry into force of the Optional Protocol for Germany on 25 November 1993, and that the Committee's competence to examine the communication was therefore precluded by virtue of the German reservation to article 5, paragraph 2 (a), of the Optional Protocol. The Committee observes that the authors had not been personally and directly affected by resolution C 47 until that resolution was applied to them individually through the decisions to expel them from the party in 1994. The origin of the violations claimed by the authors cannot, in the Committee's view, be found in the adoption of a resolution generally declaring CDU membership incompatible with affiliation with Scientology, but must be linked to the concrete acts which allegedly infringed the authors' rights under the Covenant. The Committee therefore concludes that the State party's reservation does not apply, as the alleged violations had their origin in events occurring after the entry into force of the Optional Protocol for Germany" (annex X, sect. U, paras. 8.2-8.3).

102. In case No. 1074/2002 (*Pallach v. Spain*), the Committee considered the reservation made by Spain to article 5, paragraph 2 (a), of the Optional Protocol, and decided:

> "The Committee notes that the author filed a complaint with the European Court of Human Rights, which, on 27 April 2000 declared her appeal inadmissible on the grounds that it was manifestly unfounded. The Committee notes that the European Court examined the facts that are now being presented by the author, as well as the legal procedure in its entirety. Specifically, the Court delivered a decision on the alleged failure of the National High Court to respond to the author's request for the holding of a hearing. The Court considered that the author had not proved that she had not had a fair hearing in the Spanish courts. Likewise, it took into consideration the fact that, according to the judgement of the Barcelona Criminal Court No. 13 on 14 July 1997, Arturo Navarra Ferragut had signed a document authorizing the radiosurgery treatment that was performed on him, and that the said document explicitly set out the possible side effects. In light of the above, it can be established that, although the author wishes the Committee to approach the case from a different angle from that taken by the European Court, the case addresses the 'same matter' that has already been examined under another procedure of international investigation and analysed in this context. The Committee notes that while most of the authentic language versions of article 5.2 (a) of the Optional Protocol refer only to instances where the same matter is pending before another international body, the Spanish text of the said provision also relates to situations where such examination has been concluded. The Committee maintains its position that article 5.2 (a) of the Optional Protocol is to be interpreted in the light of the other authentic languages, rather that the Spanish one. However, it notes that the State party's reservation submitted in Spanish , at the time of accession to the Optional Protocol, uses terminology close to the text of the Spanish version of article 5.2 (a) of the Optional Protocol. It concludes that the State party had the clear intention to extend, by way of reservation, the provision of article 5, paragraph 2 (a), of the Optional Protocol to cover communications the consideration of which has been completed under another international procedure. The communication must therefore be declared inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as modified by the State party's reservation" (annex X, sect. Q, para. 6.2).

103. In case No. 712/1996 (*Smirnova v. Russian Federation*), the Committee decided:

> "There are several considerations bearing on the admissibility of these additional communications. First, the fact that the author has submitted a complaint to the European Court requires the Committee to consider the issue of article 5, paragraph 2 (a), of the Protocol, namely whether 'the same matter' is 'being examined under another procedure of international investigation or settlement'. Insofar as the matters raised in the authors' communications to the Committee relate to circumstances occurring after the date of her initial communication to the Committee, these matters appear to the Committee to be the 'same' as matter which were before the European Court. So much appears from the judgement of the European Court, which described the factual circumstances submitted to it by the author in some detail. According to the Court, these cover the author's arrest and detention by the authorities of the State party on four separate occasions. The author's claim before the European Court invoked article 5 of the European Convention (the right to liberty and security of the person) and article 6 (determination of criminal charges within a reasonable time) . However, the author's

case before the European Court has now been determined, and therefore the same matter is not currently '*being examined*' under another international procedure. The Committee notes that, at the time the author submitted her additional communications dated 17 August 1998, 16 March 2000, 22 May 2002, and her undated communication of 1999, the same matter was before the European Court. Nevertheless, the wording of article 5 (2) (a) of the Protocol requires the Committee to consider whether, *at the time it considers the question of admissibility*, the matter is under another international procedure. The declaration issued by the State party in relation to the Optional Protocol does not, unlike the reservations of some States parties, preclude the Committee from considering communications where the same matter *has been* the subject of another international procedure. Accordingly, the Committee considers that article 5, paragraph 2 (a), poses no obstacle to admissibility in the present circumstances" (annex IX, sect. A, para. 9.2).

(b) Inadmissibility *ratione temporis* (Optional Protocol, art. 1)

104. Under article 1 of the Optional Protocol, the Committee may only receive communications concerning alleged violations of the Covenant which occurred after the entry into force of the Covenant and the Optional Protocol for the State party concerned, unless continuing effects exist which in themselves constitute a violation of a Covenant right.

105. In case No. 910/2000 (*Randolph v. Togo*), the Committee addressed the issue of "continuing effects" when declaring the communication admissible: "... the Committee observed that the grievances arising from that part of the communication, although they referred to events that pre-dated the entry into force of the Optional Protocol for Togo, continued to have effects which could in themselves constitute violations of the Covenant after that date" (annex IX, sect. L, para. 8.3). Similar findings were made in cases Nos. 909/2002 (*Kankanamge v. Sri Lanka*), 964/2001 (*Saidov v. Tajikistan*) and 1033/2001 (*Nallaratnam v. Sri Lanka*).

106. Claims have been declared inadmissible *ratione temporis* in cases Nos. 874/1999 (*Kuznetsov v. Russian Federation*) and 1060/2002 (*Deisl v. Austria*).

107. During the period under review, the Committee continued to consider three communications (cases Nos. 793/1998 *Pryce v. Jamaica*, 797/1998 *Lobban v. Jamaica* and 798/1998 *Howell v. Jamaica*) that had been submitted before Jamaica denounced the Optional Protocol under article 12 of the latter. In case No. 798/1998 (*Howell v. Jamaica*), the Committee noted: "This case was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12, paragraph 2, of the Optional Protocol, it continues to be subject to the application of the Optional Protocol" (annex IX, sect. D, para. 9).

(c) Inadmissibility for lack of standing as a victim (Optional Protocol, art. 1)

108. Claims were declared inadmissible for lack of standing as a victim in cases Nos. 712/1996 (*Smirnova v. Russian Federation*), 874/1999 (*Kuznetsov v. Russian Federation*), 977/2001 (*Brandsma v. The Netherlands*), 1024/2001 (*Sanlés Sanlés v. Spain*), 1045/2002 (*Baroy v. The Philippines*) and 1160/2003 (*G. Pohl et al. v. Austria*). In case No. 1045/2002

(*Baroy v. The Philippines*), the Committee observed that "subsequent to the submission of the communication, the Supreme Court allowed the author's appeal and substituted a term of imprisonment in place of the sentence of death. In this respect, the Committee considers that the issues raised by the author concerning the alleged violations of article 6 of the Covenant through imposition of the death sentence in his case have become moot, in relation to article 1 of the Optional Protocol" (annex X, sect. P, para. 8.2).

109. It should be noted that in case No. 1090/2002 (*Rameka v. New Zealand*), the Committee explained:

> "As to whether the authors can claim to be victims of a violation of the Covenant concerning preventive detention, as they have not yet served the amount of time that they would have had to have served to become eligible for release on parole under finite sentences applicable to their conduct, the Committee observes that the authors, having been sentenced to and begun to serve such sentences, will become effectively subject to the preventive detention regime after they have served 10 years of their sentence. As such, it is essentially inevitable that they will be exposed, after sufficient passage of time, to the particular regime, and they will be unable to challenge the imposition of the sentence of preventive detention upon them at that time. This situation may be contrasted with that in *A.R.S. v. Canada*, where the future application of the mandatory supervision regime to the prisoner in question was at least in part dependent on his behaviour up to that point, and thus speculative at an earlier point of time in the imprisonment. The Committee accordingly does not consider it inappropriate that the authors argue the compatibility of their sentence with the Covenant at an earlier point, rather than when 10 years' imprisonment have elapsed. The communication is thus not inadmissible for want of a victim of a violation of the Covenant" (annex IX, sect. FF, para. 6.2).

110. In case No. 1069/2002 (*Bakhtiyari v. Australia*), the Committee also decided:

> "As to the State party's argument that the removal of Mrs. Bakhtiyari and her children is hypothetical and thus there is not an 'actual grievance' for the purposes of the Optional Protocol, the Committee observes that, whatever the position might have been at the time the State party lodged its submissions, according to recent information, the State party regards itself under a duty to remove Mrs. Bakhtiyari and her children as soon as is 'reasonably practicable' and is taking steps to that end. Accordingly, the claims based on threat of removal of Mrs. Bakhtiyari and her children are not inadmissible for reason of being of hypothetical nature" (annex IX, sect. DD, para. 8.3).

111. In conformity with its consistent jurisprudence that it can only examine individual petitions presented by the alleged victims themselves or by duly authorized representatives, in case No. 1138/2002 (*Arenz v. Germany*), the Committee found:

> "The Committee notes that the heirs of Mr. Arenz have reaffirmed their interest in seeking rehabilitation and just satisfaction for the late first author as well as for themselves, and concludes that they have *locus standi*, under article 1 of the Optional Protocol, to proceed with the first author's communication" (annex X, sect. U, para. 8.4).

112. In cases Nos. 1002/2001 (*Wallmann v. Germany*) and 1214/2003 (*Vlad v. Germany*), the Committee applied its constant jurisprudence by which the authors must be personally and directly affected by the alleged violation of any provision of the Covenant in order to claim the status of "victim" under article 1 of the Optional Protocol.

113. In conformity with its jurisprudence, the Committee noted, in case No. 1002/2001 (*Wallmann v. Austria*), that the "Hotel zum Hirschen Josef Wallmann" is not an individual, and as such cannot submit a communication under article 1 of the Optional Protocol.

114. In case No. 1239/2004 (*Wilson v. Australia*), the Committee reiterated its position that an individual cannot claim the status of "victim" in respect of alleged violations of the right of all peoples to self-determination, as enshrined in article 1 of the Covenant.

(d) Claims not substantiated (Optional Protocol, art. 2)

115. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

116. Although an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient materials substantiating his/her allegation for purposes of admissibility. A "claim" is, therefore, not just an allegation, but an allegation supported by substantiating material. In cases where the Committee finds that the author has failed to substantiate a claim for purposes of admissibility, the Committee has held the communication inadmissible, in accordance with rule 90 (b) of its rules of procedure.

117. Claims have been declared inadmissible for lack of substantiation in cases Nos. 697/1996 (*Aponte Guzmán*), 797/1998 (*Lobban v. Jamaica*), 815/1998 (*Dugin v. Russian Federation*), 842/1998 (*Romanov v. Ukraine*), 867/1999 (*Smartt v. Republic of Guyana*), 868/1999 (*Wilson v. The Philippines*), 874/1999 (*Kuznetsov v. Russian Federation*), 911/2000 (*Nazarov v. Uzbekistan*), 917/2000 (*Arutyunyan v. Uzbekistan*), 920/2000 (*Lovell v. Australia*), 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*), 961/2000 (*Everett v. Spain*), 970/2001 (*Fabrikant v. Canada*), 977/2001 (*Brandsma v. the Netherlands*), 990/2001 (*Irschik v. Austria*), 999/2001 (*Dichtl et al. v. Austria*), 1002/2001 (*Wallmann v. Austria*), 1006/2001 (*Martínez Muñoz v. Spain*), 1011/2001 (*Madafferi v. Australia*), 1015/2001 (*Perterer v. Austria*), 1024/2001 (*Sanlés Sanlés v. Spain*), 1060/2002 (*Deisl v. Austria*), 1069/2002 (*Bakhtiyari v. Australia*), 1080/2002 (*Nicholas v. Australia*), 1090/2002 (*Rameka v. New Zealand*), 1096/2002 (*Kurbanov v. Tajikistan*), 1115/2002 (*Petersen v. Germany*), 1138/2002 (*Arenz v. Germany*), 1160/2003 (*G. Pohl et al. v. Austria*), 1167/2003 (*Ramil Rayos v. The Philippines*), 1179/2003 (*Ngambi v. France*), 1191/2003 (*Hruska v. Czech Republic*), 1214/2003 (*Vlad v. Germany*) and 1239/2004 (*Wilson v. Australia*). Individual opinions were appended to the Committee's Views in respect of case No. 920/2000 (*Lovell v. Australia*).

(e) Competence of the Committee with respect to the evaluation of facts and evidence (Optional Protocol, art. 2)

118. A specific form of lack of substantiation is represented by cases where the author invites the Committee to re-evaluate issues of fact and evidence addressed by domestic courts. In case No. 917/2000 (*Arutyunyan v. Uzbekistan*), the Committee declared such a claim inadmissible as

follows: "... the Committee notes that this claim primarily relates to the assessment of facts and evidence by national tribunals. It recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts and evidence in any particular case, and to interpret domestic legislation, unless the evaluation was arbitrary or amounted to a denial of justice. The author has not substantiated for the purposes of admissibility that this was the case. In the circumstances, the Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol" (annex IX, sect. N, para. 5.7).

119. Similar observations were made by the Committee in cases Nos. 811/1998 (*Mula v. Republic of Guyana*), 867/1999 (*Smartt v. Republic of Guyana*), 917/2000 (*Arutyunyan v. Uzbekistan*), 927/2000 (*Svetik v. Belarus*), 1006/2001 (*Martínez Muñoz v. Spain*), 1084/2002 (*Bochaton v. France*), 1138/2002 (*Arenz v. Germany*) and 1167/2003 (*Ramil Rayos v. The Philippines*).

(f) Claims not compatible with the provisions of the Covenant (Optional Protocol, art. 3)

120. Communications must raise an issue concerning the application of the Covenant. Despite previous attempts to explain that the Committee cannot function under the Optional Protocol as an appellate body where the issue is one of domestic law, some communications continue to be based on such a misapprehension; such cases, as well as those where the facts presented do not raise issues under the articles of the Covenant invoked by the author, are declared inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant.

121. In cases Nos. 1008/2001 (*Hoyos v. Spain*) and 1019/2001 (*Barcaiztegui v. Spain*), the Committee considered that "article 26 cannot be invoked in support of claiming a hereditary title of nobility, an institution that, due to its indivisible and exclusive nature, lies outside the underlying values behind the principles of equality before the law and non-discrimination protected by article 26. It therefore concludes that the author's communication is incompatible *ratione materiae* with the provisions of the Covenant, and thus inadmissible pursuant to article 3 of the Optional Protocol" (annex X, sect. L, respectively paras. 6.4 and 6.5). Three members appended individual opinions on this issue.

122. In case No. 961/2000 (*Everett v. Spain*), the Committee decided:

> "Recalling its earlier case law the Committee considers that although the Covenant does not require that extradition procedures be judicial in nature, extradition as such does not fall outside the protection of the Covenant. On the contrary, several provisions, including articles 6, 7, 9 and 13, are necessarily applicable in relation to extradition. Particularly, in cases where, as in the current one, the judiciary is involved in deciding about extradition, it must respect the principles of impartiality, fairness and equality, as enshrined in article 14, paragraph 1, and also reflected in article 13 of the Covenant. Nevertheless, the Committee considers that even when decided by a court the consideration of an extradition request does not amount to the determination of a criminal charge in the meaning of article 14. Consequently, those of the author's claims that relate to specific provisions in paragraphs 2 and 3 of article 14, are incompatible *ratione materiae* with the provisions in question and hence inadmissible pursuant to article 3 of the Optional Protocol.

> "… The Committee notes that the author alleges that the United Kingdom requested his extradition on the basis of an alleged conspiracy to fraudulently evade the prohibition on the import of drugs and that the initial charge considered by the State party was that of having imported quantities of hashish, for which the prison sentence was not more than one year, so that it was not appropriate to grant extradition. In the Committee's opinion, the correctness of extradition decided to the United Kingdom, that could be contested in the light of article 2, paragraph 1, of the European Convention on Extradition and the Law on Passive Extradition, is beyond the scope of any particular provision of the Covenant. For this reason, the Committee considers that this part of the communication is inadmissible '*ratione materiae*'" (annex X, sect. F, paras. 6.4 and 6.6). Two individual opinions were appended to the Committee's decision on the issue of incompatibility *ratione materiae*.

123. Claims were declared inadmissible on grounds of incompatibility with the Covenant in cases Nos. 868/1999 (*Wilson v. The Philippines*), 874/1999 (*Kuznetsov v. Russian Federation*), 917/2000 (*Arutyunyan v. Uzbekistan*), 1033/2001 (*Singarasa v. Sri Lanka*), 1106/2002 (*Palandjian v. Hungary*), 1167/2003 (*Ramil Rayos v. The Philippines*), 1214/2003 (*Vlad v. Germany*) and 1239/2004 (*Wilson v. Australia*).

(g) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

124. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, it is the Committee's constant jurisprudence that the rule of exhaustion applies only to the extent that those remedies are effective and available. The State party is required to give "details of the remedies which it submitted had been made available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977, *Torres Ramirez v. Uruguay*; reasoning applied in case No. 868/1999, *Wilson v. The Philippines*).

125. In case No. 1002/2001 (*Wallmann v. Austria*), the Committee considered:

> "As to the State party's objection that the second author failed to exhaust domestic remedies, as the limited partnership itself was party to the domestic proceedings, the Committee recalls that wherever the jurisprudence of the highest domestic tribunals has decided the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts, authors are not required to exhaust domestic remedies … The Committee notes that the State party has not shown how the prospects of an appeal by the second author against the levy of annual membership fees by the Chamber for the years 1999 onwards would have differed from those of the appeal lodged by the limited partnership and eventually dismissed by the Austrian Constitutional Court in 1998, for lack of reasonable prospect of success" (annex IX, sect. W, para. 8.11).

126. In case No. 1011/2001 (*Madafferi v. Australia*), the Committee invoked its prior jurisprudence that any decision handed down by the Human Rights and Equal Opportunity Commission would only have recommendatory, rather than binding, effect, and thus could not be described as an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

127. In case No. 1033/2001 (*Singarasa v. Sri Lanka*), the Committee recalled its jurisprudence that a Presidential pardon constitutes an extraordinary remedy and as such is not an effective remedy for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.

128. The rule also provides that the Committee is not precluded from examining a communication if it is established that application of the remedies in question is unreasonably prolonged. In case No. 1006/2001 (*Martínez Muñoz v. Spain*), the Committee recalled its jurisprudence in communication No. 864/1999 (*Ruiz Agudo v. Spain*), according to which domestic remedies are considered as exhausted, despite the possibility of a claim for compensation under administrative law, if judicial proceedings have been unreasonably prolonged without sufficient explanation provided by the State party.

129. In the period covered by the present report, certain claims were declared inadmissible for failure to pursue available and/or effective remedies. See cases Nos. 815/1998 (*Dugin v. Russian Federation*), 870/1999 (*H.S. v. Greece*), 910/2000 (*Randolph v. Togo*), 920/2000 (*Lovell v. Australia*), 976/2001 (*Derksen v. The Netherlands*), 1003/2001 (*P.L. v. Germany*), 1015/2001 (*Perterer v. Austria*), 1084/2002 (*Bochaton v. France*), 1090/2002 (*Rameka v. New Zealand*), 1106/2002 (*Palandjian v. Hungary*), 1136/2002 (*Borzov v. Estonia*) and 1167/2003 (*Ramil Rayos v. The Philippines*). One individual opinion was appended to the Committee's Views in respect of case No. 910/2000 (*Randolph v. Togo*) on the issue of exhaustion of domestic remedies.

130. In cases Nos. 1040/2001 (*Romans v. Canada*), 1045/2002 (*Baroy v. The Philippines*) and 1069/2002 (*Bakhtiyari v. Australia*), the Committee recalled its practice that it decides the question of exhaustion of domestic remedies, in contested cases, at the point of its consideration of the communication, absent exceptional circumstances.

131. In case No. 926/2000 (*Shin v. Republic of Korea*), the Committee considered:

> "that the State party has not claimed that there are any domestic remedies that have not been exhausted or could be further pursued by the author. Since the State party is claiming inadmissibility on the generic contention that the judicial proceedings were consistent with the Covenant, issues which are to be considered at the merits stage of the communication, the Committee considers it more appropriate to consider the State party's arguments in this respect at that stage" (annex IX, sect. P, para. 6.2).

(h) Inadmissibility because of submission to another procedure of international investigation or settlement (Optional Protocol, art. 5, para. 2 (a))

132. Pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee shall ascertain that the same matter is not being examined under another procedure of international investigation or settlement. Upon becoming parties to the Optional Protocol, some States have made a reservation to preclude the Committee's competence if the same matter has already been examined under another procedure. During the period under review, the Committee addressed this issue in cases Nos. 990/2001 (*Irschik v. Austria*), 1002/2001 (*Wallmann v. Austria*), 1003/2001 (*P.L. v. Germany*) and 1115/2002 (*Petersen v. Germany*).

(i) Burden of proof

133. Under the Optional Protocol, the Committee bases its Views on all written information made available by the parties. This implies that if a State party does not provide an answer to an author's allegations, the Committee will give due weight to the uncontested allegations as long as they are substantiated. In the period under review, the Committee recalled this principle in its Views on cases Nos. 793/1998 (*Pryce v. Jamaica*), 798/1998 (*Howell v. Jamaica*), 888/1999 (*Telitsin v. Russian Federation*) and 917/2000 (*Arutyunyan v. Uzbekistan*).

(j) Interim measures under rule 86

134. Under rule 86 of the Committee's rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on suitable occasions, mostly in cases submitted by or on behalf of persons who have been sentenced to death and are awaiting execution and who claim that they were denied a fair trial. In view of the urgency of such communications, the Committee has requested the States parties concerned not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. Rule 86 has also been applied in other circumstances, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected under the Covenant. For the Committee's reasoning on whether or not to issue a request under rule 86, see the Committee's Views in communication No. 558/1993 (*Canepa v. Canada*) (A/52/40, vol. II, annex VI, sect. K). It should be noted that during the period under review, for the first time, in case No. 926/2000 (*Shin v. Republic of Korea*), a rule 86 was issued requesting the State party not to destroy a painting for the production of which the author was convicted, whilst the case was under consideration by the Committee.

(k) Breach of Optional Protocol obligations

135. When States parties have disregarded the Committee's decisions under rule 86, the Committee may find that the State party has violated its obligations under the Optional Protocol. In case No. 1051/2002 (*Ahani v. Canada*), the Committee considered that "the State party breached its obligations under the Optional Protocol, by deporting the author before the Committee could address the author's allegation of irreparable harm to his Covenant rights. The Committee observes that torture is, alongside the imposition of the death penalty, the most grave and irreparable of possible consequences to an individual of measures taken by the State party. Accordingly, action by the State party giving rise to a risk of such harm, as indicated a priori by the Committee's request for interim measures, must be scrutinized in the strictest light.

136. "Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant are essential to the Committee's role under the Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from a State party to face torture or death in another country, undermines the protection of Covenant rights through the Optional Protocol" (annex IX, sect. BB, paras. 8.1-8.2). Similar considerations were made in case No. 964/2001 (*Saidov v. Tajikistan*).

(l) Positive developments in relation to interim measures under rule 86

137. While Uzbekistan, on previous occasions, had breached its obligations under the Optional Protocol through executing persons whose cases were subject to a pending Optional Protocol case and a duly communicated rule 86 request, in cases Nos. 1141/2002 (*Gugnin v. Uzbekistan*) and 1163/2003 (*Isaev and Karimov v. Uzbekistan*), in accordance with rule 86 of the Committee's rules, measures were taken by the Uzbek Supreme Court to suspend the carrying out of death sentences. Furthermore, the Presidium of the Court commuted death sentences against the authors to sentences of 20 years' imprisonment.

2. Substantive issues

(a) Equal right of men and women (Covenant, art. 3)

138. Article 3 provides that the States parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

139. In case No. 943/2000 (*Guido Jacobs v. Belgium*), the Committee found:

> "With regard to the complaints of violations of articles 2, 3, 25 (c) and 26 of the Covenant, arising from article 295 bis-1, paragraph 3, of the Act of 22 December 1998, the Committee takes note of the author's arguments challenging the gender requirement for access to a non-justice seat on the High Council of Justice on the grounds that it is discriminatory. The Committee also notes the State party's argument justifying such a requirement by reference to the law, the objective of the measure, and its effect in terms of the appointment of candidates and the constitution of the High Council of Justice.
>
> "The Committee recalls that, under article 25 (c) of the Covenant, every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, to have access, on general terms of equality, to public service in his or her country. In order to ensure access on general terms of equality, the criteria and processes for appointment must be objective and reasonable. States parties may take measures in order to ensure that the law guarantees to women the rights contained in article 25 on equal terms with men . The Committee must therefore determine whether, in the case before it, the introduction of a gender requirement constitutes a violation of article 25 of the Covenant by virtue of its discriminatory nature, or of other provisions of the Covenant concerning discrimination, notably articles 2 and 3 of the Covenant, as invoked by the author, or whether such a requirement is objectively and reasonably justifiable. The question in this case is whether there is any valid justification for the distinction made between candidates on the grounds that they belong to a particular sex.
>
> "In the first place, the Committee notes that the gender requirement was introduced by Parliament under the terms of the Act of 20 July 1990 on the promotion of a balance between men and women on advisory bodies . The aim in this case is to increase the representation of and participation by women in the various advisory bodies in view of the very low numbers of women found there . On this point, the Committee finds the author's assertion that the insufficient number of female applicants in response to the first call proves there is no inequality between men and women to be unpersuasive in the

present case; such a situation may, on the contrary, reveal a need to encourage women to apply for public service on bodies such as the High Council of Justice, and the need for taking measures in this regard. In the present case, it appears to the Committee that a body such as the High Council of Justice could legitimately be perceived as requiring the incorporation of perspectives beyond one of juridical expertise only. Indeed, given the responsibilities of the judiciary, the promotion of an awareness of gender-relevant issues relating to the application of law, could well be understood as requiring that perspective to be included in a body involved in judicial appointments. Accordingly, the Committee cannot conclude that the requirement is not objective and reasonably justifiable.

"Secondly, the Committee notes that the gender clause requires there to be at least 4 applicants of each sex among the 11 non-justices appointed, which is to say just over one third of the candidates selected. In the Committee's view, such a requirement does not in this case amount to a disproportionate restriction of candidates' right of access, on general terms of equality, to public office. Furthermore, and contrary to the author's contention, the gender requirement does not make qualifications irrelevant, since it is specified that all non-justice applicants must have at least 10 years' experience. With regard to the author's argument that the gender requirement could give rise to discrimination between the three categories within the group of non-justices as a result, for example, of only men being appointed in one category, the Committee considers that in that event there would be three possibilities: either the female applicants were better qualified than the male, in which case they could justifiably be appointed; or the female and male applicants were equally well qualified, in which case the priority given to women would not be discriminatory in view of the aims of the law on the promotion of equality between men and women, as yet still lacking; or the female candidates were less well qualified than the male, in which case the Senate would be obliged to issue a second call for candidates in order to reconcile the two aims of the law, namely, qualifications and gender balance, neither of which may preclude the other. On that basis, there would appear to be no legal impediment to reopening applications. Lastly, the Committee finds that a reasonable proportionality is maintained between the purpose of the gender requirement, namely to promote equality between men and women in consultative bodies; the means applied and its modalities, as described above; and one of the principal aims of the law, which is to establish a High Council made up of qualified individuals. Consequently, the Committee finds that paragraph 3 of article 295 bis-1 of the Act of 22 December 1998 meets the requirements of objective and reasonable justification.

"In the light of the foregoing, the Committee finds that article 295 bis-1, paragraph 3, does not violate the author's rights under the provisions of articles 2, 3, 25 (c) and 26 of the Covenant.

"As regards the complaints of violations of articles 2, 3, 25 (c) and 26 of the Covenant arising from the application of the Act of 22 December 1998, and in particular article 295 bis-1, paragraph 3, the Committee takes note of the author's arguments claiming, in the first place, that the appointment of the Dutch-speaking non-justices, the group to which Mr. Jacobs belonged, was conducted without regard to an established procedure, without interviews, profiling or comparison of qualifications, being based rather on nepotism and political affiliation. The Committee has also examined the State party's arguments, which explain in detail the procedure for appointing the non-justices. The Committee notes that the Senate established and put into effect a special appointments procedure, viz.: first, a list of recommended candidates was drawn up after consideration and comparison of all applications on the basis of the relevant files and curricula vitae; secondly, each senator was given the choice of voting, in a secret ballot, either for the recommended list, or for a list of all the candidates. The Committee finds that this appointments procedure was objective and reasonable for the reasons made clear in the State party's explanations: before the recommended list was drawn up and the Senate made the appointments, each candidate's curriculum vitae and files were examined and their qualifications compared; the choice of a procedure based on files and curricula vitae rather than on interviews was prompted by the number of applications and the constraints of the parliamentary timetable, and there was no legal provision specifying a particular method of evaluation, such as interviews ...; the choice of the recommended list method had to do with the large number of criteria and the overlap between them, and was a practice already established in the Senate and Chamber of Representatives; lastly, it was possible for the senators to make the appointments using two methods of voting, which guaranteed them freedom of choice. Furthermore, the Committee finds that the author's complaints that the appointment of candidates was made on the basis of nepotism and political considerations have not been sufficiently substantiated.

"With regard to the complaint of discrimination between categories within the group of non-justices arising from the introduction of the gender requirement, the Committee finds that the author has not sufficiently substantiated this part of the communication and, in particular, has produced no evidence to show that any female candidates were appointed despite being less well qualified than male candidates.

"With regard to the complaint of discrimination between applicants in connection with the Senate's second call for applications, and to the claim that the second call was illegal, the Committee notes that this call was issued because of the insufficient numbers of applications from women, i.e., two applications from women for the Dutch-speaking college - which the author concedes - whereas under article 295 bis-1, paragraph 3, each group of non-justices on the High Council of Justice must comprise at least four members of each sex. The Committee finds, therefore, that the second call was justified to allow the Council to be constituted and, furthermore, that there was no impediment to such action either in law or in parliamentary practice, particularly as the applications submitted in response to the first call remained valid.

"As to the complaint of discrimination arising from the listing of non-justice alternates in alphabetical order, the Committee notes that article 295 bis-2, paragraph 4, of the Judicial Code gives the Senate the right to draw up the list of alternates but for them, unlike the justices, does not prescribe any particular method of ranking. Consequently it finds that, as shown by the State party's detailed argument, (a) the alphabetical order chosen by the Senate does not imply an order of succession; and (b) any succession in the event of a vacancy will require the appointments procedure to be conducted afresh. The author's complaints do not disclose a violation.

"The Committee therefore finds that the application of the Act of 22 December 1998, and in particular of article 295 bis-1, paragraph 3, does not violate the provisions of articles 2, 3, 25 (c) and 26 of the Covenant" (annex IX, sect. S, paras. 9.2-9.11). One member appended an individual opinion.

(b) The right to life (Covenant, art. 6)

140. Article 6 (1) protects every human being's inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life.

141. In case No. 917/2000 (*Arutyunyan v. Uzbekistan*), the Committee recalled "its jurisprudence pursuant to which the imposition of a death sentence upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant, if no further appeal against the death sentence is possible. In Mr. Arutyunyan's case, the final death sentence was pronounced without the requirements for a fair trial set out in article 14 having been met. This result[ed] in the conclusion that the right protected under article 6 ha[d] also been violated" (annex IX, sect. N, para. 6.4). Similar observations were made by the Committee in cases Nos. 811/1998 (*Mulai v. Republic of Guyana*), 867/1999 (*Smartt v. Republic of Guyana*), 964/2001 (*Saidov v. Tajikistan*), 1096/2002 (*Kurbanova v. Tajikistan*), 1117/2002 (*Khomidov v. Tajikistan*) and 1167/2003 (*Ramil Rayos v. The Philippines*). Two members appended individual opinions to the latter case.

142. In case No. 1167/2003 (*Ramil Rayos v. The Philippines*), the Committee also reiterated its jurisprudence that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offence.

143. In case No. 888/1999 (*Telitsin v. Russian Federation*), the Committee considered that it:

> "cannot do otherwise than accord due weight to the author's arguments in respect of her son's body as it was handed over to the family, which raise questions about the circumstances of his death. The Committee notes that the authorities of the State party have not carried out a proper investigation into Mr. Telitsin's death, in violation of article 6, paragraph 1, of the Covenant" (annex IX, sect. I, para. 7.6).

144. In case No. 962/2001 (*Mulezi v. Democratic Republic of the Congo*), the Committee noted "the author's statement that his wife was beaten by soldiers, that Commander Mortos refused her request to travel to Bangui to receive medical attention, and that she died three days later. The Committee consider[ed] that these statements, which the State party ha[d] not contested although it had the opportunity to do so, and which the author ha[d] sufficiently substantiated, warrant the finding that there have been violations of articles 6, paragraph 1, and 23, paragraph 1, of the Covenant as to the author and his wife" (annex IX, sect. T, para. 5.4).

(c) Prohibition of torture and ill-treatment (Covenant, art. 7)

145. In cases Nos. 712/1996 (*Smirnova v. Russian Federation*), 868/1999 (*Wilson v. The Philippines*), 888/1999 (*Telitsin v. Russian Federation*), 964/2001 (*Saidov v. Tajikistan*) and 1117/2002 (*Khomidov v. Tajikistan*) relating to allegations of torture and ill-treatment, the Committee recalled that, with regard to the burden of proof, this could not rest alone with the author of a communication, especially considering that the author and the State party did not always have equal access to evidence and that frequently the State party alone had access to relevant information. Due weight was also given to the author's allegations, when they were detailed and particularized and when the State party's explanations were not satisfactory.

146. In case No. 1096/2002 (*Kurbanov v. Tajikistan*), the Committee considered:

> "… the mere fact that no allegation of torture was made in domestic appeal proceedings cannot as such be held against the alleged victim if it is proposed, as in the present case, that such an allegation was in fact made during the actual trial but was neither recorded nor acted upon" (annex IX, sect. GG, para. 7.4).

147. In case No. 793/1998 (*Pryce v. Jamaica*), the Committee reiterated its jurisprudence, that, irrespective of the nature of the crime that is to be punished, however brutal it may be, corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant. In the present case, the Committee found that the imposition of a sentence of whipping with the tamarind switch on the author constituted a violation of the author's rights under article 7, as did the manner in which the sentence was executed.

148. In case No. 962/2001 (*Mulezi v. Democratic Republic of the Congo*), the Committee found:

> "As to the complaint of a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee notes that the author has given a detailed account of the treatment he was subjected to during his detention, including acts of torture or ill-treatment and, subsequently, the deliberate denial of proper medical attention despite his loss of mobility. Indeed, he has provided a medical certificate attesting to the sequelae of such treatment. Under the circumstances, and in the absence of any counter-argument from the State party, the Committee finds that the author was a victim of multiple violations of article 7 of the Covenant, prohibiting torture and cruel, inhuman and degrading treatment. The Committee considers that the conditions of detention described in detail by the author also constitute a violation of article 10, paragraph 1, of the Covenant" (annex IX, sect. T, para. 5.3).

149. In case No. 868/1999 (*Wilson v. The Philippines*), as to the author's claims relating to mental suffering and anguish as a consequence of being sentenced to death, the Committee:

> "… observe[d] that the author's mental condition was exacerbated by his treatment in, as well as the conditions of, his detention, and resulted in documented long-term psychological damage to him. In view of these aggravating factors constituting further compelling circumstances beyond the mere length of time spent by the author in imprisonment under a sentence of death, the Committee conclude[d] that the author's suffering under a sentence of death amounted to an additional violation of article 7. None of these violations were remedied by the Supreme Court's decision to annul the author's conviction and death sentence after he had spent almost fifteen months of imprisonment under a sentence of death" (annex IX, sect. H, para. 7.4).

150. In case No. 1051/2002 (*Ahani v. Canada*), the Committee considered:

> "… with respect to the process and the fact of the author's expulsion, the Committee observes, at the initial stage of the process, that at the Federal Court's 'reasonableness' hearing on the security certification the author was provided by the Court with a summary redacted for security concerns reasonably informing him of the claims made against him. The Committee notes that the Federal Court was conscious of the 'heavy

burden' upon it to assure through this process the author's ability appropriately to be aware of and respond to the case made against him, and the author was able to, and did, present his own case and cross-examine witnesses. In the circumstances of national security involved, the Committee is not persuaded that this process was unfair to the author. Nor, recalling its limited role in the assessment of facts and evidence, does the Committee discern on the record any elements of bad faith, abuse of power or other arbitrariness which would vitiate the Federal Court's assessment of the reasonableness of the certificate asserting the author's involvement in a terrorist organization. The Committee also observes that the Covenant does not, as of right, provide for a right of appeal beyond criminal cases to all determinations made by a court. Accordingly, the Committee need not determine whether the initial arrest and certification proceedings in question fell within the scope of article 13 (as a decision pursuant to which an alien lawfully present is expelled) or 14 (as a determination of rights and obligations in a suit at law), as in any event the author has not made out a violation of the requirements of those articles in the manner the Federal Court's 'reasonableness' hearing was conducted.

"Concerning the author's claims under the same articles with respect to the subsequent decision of the Minister of Citizenship & Immigration that he could be deported, the Committee notes that the Supreme Court held, in the companion case of *Suresh*, that the process of the Minister's determination in that case of whether the affected individual was at risk of substantial harm and should be expelled on national security grounds was faulty for unfairness, as he had not been provided with the full materials on which the Minister based his or her decision and an opportunity to comment in writing thereon and further as the Minister's decision was not reasoned. The Committee further observes that where one of the highest values protected by the Covenant, namely the right to be free from torture, is at stake, the closest scrutiny should be applied to the fairness of the procedure applied to determine whether an individual is at a substantial risk of torture. The Committee emphasizes that this risk was highlighted in this case by the Committee's request for interim measures of protection.

"In the Committee's view, the failure of the State party to provide him, in these circumstances, with the procedural protections deemed necessary in the case of *Suresh*, on the basis that the present author had not made out a prima facie risk of harm fails to meet the requisite standard of fairness. The Committee observes in this regard that such a denial of these protections on the basis claimed is circuitous in that the author may have been able to make out the necessary level of risk if in fact he had been allowed to submit reasons on the risk of torture faced by him in the event of removal, being able to base himself on the material of the case presented by the administrative authorities against him in order to contest a decision that included the reasons for the Minister's decision that he could be removed. The Committee emphasizes that, as with the right to life, the right to be free from torture requires not only that the State party not only refrain from torture but take steps of due diligence to avoid a threat to an individual of torture from third parties.

"The Committee observes further that article 13 is in principle applicable to the Minister's decision on risk of harm, being a decision leading to expulsion. Given that the domestic procedure allowed the author to provide (limited) reasons against his expulsion and to receive a degree of review of his case, it would be inappropriate for the Committee to accept that, in the proceedings before it, 'compelling reasons of national security' existed to exempt the State party from its obligation under that article to provide the

> procedural protections in question. In the Committee's view, the failure of the State party to provide him with the procedural protections afforded to the plaintiff in *Suresh* on the basis that he had not made out a risk of harm did not satisfy the obligation in article 13 to allow the author to submit reasons against his removal in the light of the administrative authorities' case against him and to have such complete submissions reviewed by a competent authority, entailing a possibility to comment on the material presented to that authority. The Committee thus finds a violation of article 13 of the Covenant, in conjunction with article 7.
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> "The Committee notes that as article 13 speaks directly to the situation in the present case and incorporates notions of due process also reflected in article 14 of the Covenant, it would be inappropriate in terms of the scheme of the Covenant to apply the broader and general provisions of article 14 directly.
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> "As a result of its finding that the process leading to the author's expulsion was deficient, the Committee thus does not need to decide the extent of the risk of torture prior to his deportation or whether the author suffered torture or other ill-treatment subsequent to his return. The Committee does however refer, in conclusion, to the Supreme Court's holding in *Suresh* that deportation of an individual where a substantial risk of torture had been found to exist was not necessarily precluded in all circumstances. While it has neither been determined by the State party's domestic courts or by the Committee that a substantial risk of torture did exist in the author's case, the Committee expresses no further view on this issue other than to note that the prohibition on torture, including as expressed in article 7 of the Covenant, is an absolute one that is not subject to countervailing considerations" (annex IX, sect. BB, paras. 10.5-10.10). One member appended an individual opinion on this issue.

(d) Liberty and security of person (Covenant, art. 9, para. 1)

151. Article 9, paragraph 1, of the Covenant guarantees both the right of every person to liberty, i.e. not to be subjected to arbitrary arrest or detention, and the right to one's personal security.

152. In case No. 1069/2002 (*Bakhtiyari v. Australia*), the Committee recalled its jurisprudence that, in order to avoid any characterization of arbitrariness, detention should not continue beyond the period for which a State party can provide appropriate justification. The Committee considered:

> "In the present case, Mr. Bakhtiyari arrived by boat, without dependants, with his identity in doubt and claiming to be from a State suffering serious internal disorder. In light of these factors and the fact that he was granted a protection visa and released two months after he had filed an application (some seven months after his arrival), the Committee is unable to conclude that, while the length of his first detention may have been undesirable, it was also arbitrary and in breach of article 9, paragraph 1. In the light of this conclusion, the Committee need not examine the claim under article 9, paragraph 4, with respect to Mr. Bakhtiyari. The Committee observes that Mr. Bakhtiyari's second period of detention, which has continued from his arrest for purposes of deportation on 5 December 2002 until the present may raise similar issues under article 9, but does not express a further view thereon in the absence of argument from either party.

> "Concerning Mrs. Bakhtiyari and her children, the Committee observes that Mrs. Bakhtiyari has been detained in immigration detention for two years and ten months, and continues to be detained, while the children remained in immigration detention for two years and eight months until their release on interim orders of the Family Court. Whatever justification there may have been for an initial detention for the purposes of ascertaining identity and other issues, the State party has not, in the Committee's view, demonstrated that their detention was justified for such an extended period. Taking into account in particular the composition of the Bakhtiyari family, the State party has not demonstrated that other, less intrusive, measures could not have achieved the same end of compliance with the State party's immigration policies by, for example, imposition of reporting obligations, sureties or other conditions which would take into account the family's particular circumstances. As a result, the continuation of immigration detention for Mrs. Bakhtiyari and her children for length of time described above, without appropriate justification, was arbitrary and contrary to article 9, paragraph 1, of the Covenant" (annex IX, sect. DD, paras. 9.2 and 9.3).

153. In case No. 1090/2002 (*Rameka v. New Zealand*), the Committee found:

> "... Mr. Harris' detention for this period of two and half years is based on the State party's law and is not arbitrary ...
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> "Turning to the issue of the consistency with the Covenant of the sentences of preventive detention of both the remaining authors, Messrs. Rameka and Harris, once the non-parole period of ten years expires, the Committee observes that after the ten-year period has elapsed, there are compulsory annual reviews by the independent Parole Board, with the power to order the prisoner's release if they are no longer a significant danger to the public, and that the decisions of the Board are subject to judicial review. The Committee considers that the remaining authors' detention for preventive purposes, that is, protection of the public, once a punitive term of imprisonment has been served, must be justified by compelling reasons, reviewable by a judicial authority, that are and remain applicable as long as detention for these purposes continues. The requirement that such continued detention be free from arbitrariness must thus be assured by regular periodic reviews of the individual case by an independent body, in order to determine the continued justification of detention for purposes of protection of the public. The Committee is of the view that the remaining authors have failed to show that the compulsory annual reviews of detention by the Parole Board, the decisions of which are subject to judicial review in the High Court and Court of Appeal, are insufficient to meet this standard. Accordingly, the remaining authors have not demonstrated, at the present time, that the future operation of the sentences they have begun to serve will amount to arbitrary detention, contrary to article 9, once the preventive aspect of their sentences commences" (annex IX, sect. FF, para. 7.3). Eight members appended individual opinions in particular on the issue of arbitrariness of detention.

154. The Committee found violations of article 9, paragraph 1, of the Covenant in cases Nos. 962/2001 (*Mulezi v. Democratic of the Congo*) and 1117/2002 (*Khomidov v. Tajikistan*).

(e) Right to be informed, at the time of arrest, of the reasons for arrest and to be promptly informed of any charges against oneself (Covenant, art. 9, para. 2)

155. In case No. 1096/2002 (*Kurbanov v. Tajikistan*), the Committee found:

> "The Committee has taken note of the author's claim that her son was detained on a Saturday (5 May 2001), and detained for seven days without a charge. To support her claim, she provides a copy of the police register which displays a record entered on 7 May 2001 relating to her son's arrest, allegedly for fraud. She filed a complaint about the allegedly illegal detention of her son with the Office of the Procurator General on the same day. Furthermore, the Committee notes that according to the judgement of 2 November 2001 by the Military Chamber of the Supreme Court, the author was detained on 5 May 2001. This information is not refuted by the State party's contention that an arrest warrant was issued on 12 May 2001. In the absence of any further explanations from the State party, the Committee concludes that Mr. Kurbanov was detained for seven days without an arrest warrant … The Committee concludes that his rights under article 9, paragraphs 2 and 3, of the Covenant have been violated" (annex IX, sect. GG, para. 7.2).

156. Similar findings were made in cases Nos. 868/1999 (*Wilson v. The Philippines*) and 962/2001 (*Mulezi v. Democratic Republic of the Congo*).

(f) Right to be brought promptly before a judge (Covenant, art. 9, para. 3)

157. The Committee found violations of article 9, paragraph 3, in cases Nos. 868/1999 (*Wilson v. The Philippines*), 911/2000 (*Nazarov v. Uzbekistan*), 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*) and 1096/2002 (*Kurbanov v. Tajikistan*).

158. In case No. 911/2000 (*Nazarov v. Uzbekistan*), the Committee considered:

> "… the author notes that his arrest was confirmed by the relevant authority on 31 December 1997, 5 days after his detention, however it does not appear that the confirmation of the arrest involved the author being brought before a judge or other authorized judicial officer. In any event, the Committee does not consider that a period of 5 days could be considered 'prompt' for the purpose of article 9 (3). Accordingly, in the absence of an explanation from the State party, the Committee considers that the communication discloses a violation of article 9 (3) by the State party" (annex IX, sect. M, para. 6.2).

(g) Right to bring proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful (Covenant, art. 9, para. 4)

159. In case No. 1051/2002 (*Ahani v. Canada*), the Committee considered:

> "As to the claims under article 9 concerning arbitrary detention and lack of access to court, the Committee notes the author's argument that his detention pursuant to the security certificate as well as his continued detention until deportation was in violation of this article. The Committee observes that, while the author was mandatorily taken into

> detention upon issuance of the security certificate, under the State party's law the Federal Court is to promptly, that is within a week, examine the certificate and its evidentiary foundation in order to determine its 'reasonableness'. In the event that the certificate is determined not to be reasonable, the person named in the certificate is released. The Committee observes, consistent with its earlier jurisprudence, that detention on the basis of a security certification by two Ministers on national security grounds does not result ipso facto in arbitrary detention, contrary to article 9, paragraph 1. However, given that an individual detained under a security certificate has neither been convicted of any crime nor sentenced to a term of imprisonment, an individual must have appropriate access, in terms of article 9, paragraph 4, to judicial review of the detention, that is to say, review of the substantive justification of detention, as well as sufficiently frequent review.
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> "As to the alleged violation of article 9, paragraph 4, the Committee is prepared to accept that a 'reasonableness' hearing in Federal Court promptly after the commencement of mandatory detention on the basis of a Ministers'security certificate is, in principle, sufficient judicial review of the justification for detention to satisfy the requirements of article 9, paragraph 4, of the Covenant. The Committee observes, however, that when judicial proceedings that include the determination of the lawfulness of detention become prolonged the issue arises whether the judicial decision is made 'without delay' as required by the provision, unless the State party sees to it that interim judicial authorization is sought separately for the detention. In the author's case, no such separate authorization existed although his mandatory detention until the resolution of the 'reasonableness' hearing lasted four years and ten months. Although a substantial part of that delay can be attributed to the author who chose to contest the constitutionality of the security certification procedure instead of proceeding directly to the 'reasonableness' hearing before the Federal Court, the latter procedure included hearings and lasted nine and a half months after the final resolution of the constitutional issue on 3 July 1997. This delay alone is in the Committee's view too long in respect of the Covenant requirement of judicial determination of the lawfulness of detention without delay. Consequently, there has been a violation of the author's rights under article 9, paragraph 4, of the Covenant.
>
> "As to the author's later detention, after the issuance of a deportation order in August 1998, for a period of 120 days before becoming eligible to apply for release, the Committee is of the view that such a period of detention in the author's case was sufficiently proximate to a judicial decision of the Federal Court to be considered authorized by a court and therefore not in violation of article 9, paragraph 4" (annex IX, sect. BB, paras. 10.2-10.4). Five members appended individual opinions on this issue.

160. In case No. 1069/2002 (*Bakhtiyari v. Australia*), the Committee found:

> "As to the claim under article 9, paragraph 4, related to this period of detention [see para.], the Committee refers to its discussion of admissibility above and observes that the court review available to Mrs. Bakhtiyari would be confined purely to a formal assessment of whether she was a 'non-citizen' without an entry permit. The Committee observes that there was no discretion for a domestic court to review the justification of her detention in substantive terms. The Committee considers that the inability judicially to challenge a detention that was, or had become, contrary to article 9, paragraph 1, constitutes a violation of article 9, paragraph 4.

> "As to the children, the Committee observes that until the decision of the Full Bench of the Family Court on 19 June 2003, which held that it had jurisdiction under child welfare legislation to order the release of children from immigration detention, the children were in the same position as their mother, and suffered a violation of their rights under article 9, paragraph 4, up to that moment on the same basis. The Committee considers that the ability for a court to order a child's release if considered in its best interests, which subsequently occurred (albeit on an interim basis), is sufficient review of the substantive justification of detention to satisfy the requirements of article 9, paragraph 4, of the Covenant. Accordingly, the violation of article 9, paragraph 4, with respect to the children came to an end with the Family Court's finding of jurisdiction to make such orders" (annex IX, sect. DD, paras. 9.4 and 9.5). One member appended an individual opinion on this issue.

161. In case No. 1090/2002 (*Rameka v. New Zealand*), the Committee considered:

> "The Committee observes at the outset that Mr. Harris would have been subjected, according to the Court of Appeal, to a finite sentence of 'not less than' seven and a half years with respect to his offences. Accordingly, Mr. Harris will serve two and a half years of detention, for preventive purposes, before the non-parole period arising under his sentence of preventive detention expires. Given that the State party has demonstrated no case where the Parole Board has acted under its exceptional powers to review *proprio motu* a prisoner's continued detention prior to the expiry of the non-parole period, the Committee finds that, while Mr. Harris' detention for this period of two and a half years is based on the State party's law and is not arbitrary, his inability for that period to challenge the existence, at that time, of substantive justification of his continued detention for preventive reasons is in violation of his right under article 9, paragraph 4, of the Covenant to approach a 'court' for a determination of the 'lawfulness' of his detention over this period" (annex IX, sect. FF, para. 9.4). Nine members appended individual opinions on this issue.

162. The Committee found violations of article 9, paragraph 4, of the Covenant in cases Nos. 712/1996 (*Smirnova v. Russian Federation*) and 962/2001 (*Mulezi v. Democratic Republic of the Congo*).

(h) Treatment during imprisonment (Covenant, art. 10)

163. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In case No. 798/1998 (*Howell v. Jamaica*), the Committee found:

> "... taking into account the Committee's earlier views in which it has found the conditions on death row in St. Catherine's District Prison to violate article 10 (1), the Committee considers that the author's conditions of detention, taken together with the lack of medical and dental care and the incident of the burning of his personal belongings, violate the author's right to be treated with humanity and respect for the dignity of his person under article 10 (1) of the Covenant" (annex IX, sect. D, para. 6.2). Similar findings were made in case No. 797/1998 (*Lobban v. Jamaica*).

164. In case No. 917/2000 (*Arutyunyan v. Uzbekistan*), the Committee considered:

> "The Committee notes the allegation that Mr. Arutyunyan was kept incommunicado for two weeks after his transfer to Tashkent. In substantiation, the author claims that the family tried, unsuccessfully, to obtain information in this regard from the Office of the Attorney-General. In these circumstances, and taking into account the particular nature of the case and the fact that no information was provided by the State party on this issue, the Committee concludes that Mr. Arutyunyan's rights under article 10, paragraph 1, of the Covenant have been violated. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7" (annex IX, sect. N, para. 6.2).

165. In case No. 1011/2001 (*Madafferi v. Australia*), the Committee decided:

> "As to Mr. Madafferi's return to Maribyrnong Immigration Detention Centre on 25 June 2003, where he was detained until his committal to a psychiatric hospital on 18 September 2003, the Committee notes the State party's argument that as Mr. Madafferi had by then exhausted domestic remedies, his detention would facilitate his removal, and that the flight risk had increased. It also observes the author's arguments, which remain uncontested by the State party, that this form of detention was contrary to the advice of various doctors and psychiatrists, consulted by the State party, who all advised that a further period of placement in an immigration detention centre would risk further deterioration of Mr. Madafferi's mental health. Against the backdrop of such advice and given the eventual involuntary admission of Mr. Madafferi to a psychiatric hospital, the Committee finds that the State party's decision to return Mr. Madafferi to Maribyrnong and the manner in which that transfer was affected was not based on a proper assessment of the circumstances of the case but was, as such, disproportionate. Consequently, the Committee finds that this decision and the resulting detention was in violation of article 10, paragraph 1, of the Covenant. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7" (annex IX, sect. Y, para. 9.3). One member appended an individual opinion.

166. The Committee found that the conditions of detention amounted to a violation of article 10, paragraph 1, in cases Nos. 868/1999 (*Wilson v. The Philippines*), 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*), 962/2001 (*Mulezi v. Democratic Republic of the Congo*), 964/2001 (*Saidov v. Tajikistan*) and 1096/2002 (*Kurbanov v. Tajikistan*).

167. Article 10, paragraph 2, prescribes the separation of accused juvenile persons from adults.

168. In case No. 868/1999 (*Wilson v. The Philippines*), the Committee found a violation of article 10, paragraph 2, arising from the failure to segregate the author, pre-trial, from convicted prisoners.

(i) Freedom of movement; right to return to one's country (Covenant, art. 12)

169. In case No. 910/2000 (*Randolph v. Togo*), the Committee found:

> "Noting the fact that the Optional Protocol entered into force for the State party on 30 June 1988, that is, subsequent to the release and exile of the author, the Committee recalls its admissibility decision according to which it would need to be decided on the merits whether the alleged violations of articles 7, 9, 10 and 14 continued, after the entry into force of the Optional Protocol, to have effects that of themselves constitute a violation of the Covenant. Although the author claims that he has been forced into exile and to live apart from his family and relatives, and although he has after the Committee's admissibility decision provided some additional arguments why he believes that he cannot return to Togo, the Committee is of the view that insofar as the author's submission could be understood to relate to such continuing effects of the original grievances that in themselves would amount to a violation of article 12 or other provisions of the Covenant, the author's claims have not been substantiated to such a level of specificity that would enable the Committee to establish a violation of the Covenant" (annex IX, sect. L, para. 12). One member appended an individual opinion on this issue.

(j) Expulsion (Covenant, art. 13)

170. See case No. 1051/2002 (*Ahani v. Canada*) under 2 (b).

(k) Guarantees of a fair hearing (Covenant, art. 14, para. 1)

171. Article 14, paragraph 1, provides for the right to equality before the courts and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In case No. 1096/2002 (*Kurbanov v. Tajikistan*), the Committee found:

> "As to the author's claim that her son's rights under article 14, paragraph 1, were violated through a death sentence pronounced by an incompetent tribunal, the Committee notes that the State party has neither addressed this claim nor provided any explanation as to why the trial was conducted, at first instance, by the Military Chamber of the Supreme Court. In the absence of any information by the State party to justify a trial before a military court, the Committee considers that the trial and death sentence against the author's son, who is a civilian, did not meet the requirements of article 14, paragraph 1" (annex IX, sect. GG, para. 7.6).

172. In case No. 811/1998 (*Mulai v. Republic of Guyana*), the Committee found:

> "The Committee notes that the independence and impartiality of a tribunal are important aspects of the right to a fair trial within the meaning of article 14, paragraph 1, of the Covenant. In a trial by jury, the necessity to evaluate facts and evidence independently and impartially also applies to the jury: it is important that all the jurors be placed in a position in which they may assess the facts and the evidence in an objective manner, so as to be able to return a just verdict. On the other hand, the Committee recalls that where attempts at jury tampering come to the knowledge of either of the parties, these alleged improprieties should have been challenged before the court.

> "In the present case, the author submits that the foreman of the jury at the retrial informed the police and the Chief Justice, on 26 February 1996, that someone had sought to influence him. The author claims that it was the duty of the judge to conduct an inquiry into this matter to ascertain whether any injustice could have been caused to Bharatraj and Lallman Mulai, thus depriving them of a fair trial. In addition, the author complains that the incident was not disclosed to the defence although both the judge and the prosecution were made aware of it by the foreman of the jury, and that unlike in some other trials the trial against the two brothers was not aborted as a consequence of the incident. The Committee notes that although it is not in the position to establish that the performance and the conclusions reached by the jury and the foreman in fact reflected partiality and bias against Bharatraj and Lallman Mulai, and although it appears from the material before it that the Court of Appeal dealt with the issue of possible bias, it did not address that part of the grounds of appeal that related to the right of Bharatraj and Lallman Mulai to equality before the courts, as enshrined in article 14, paragraph 1, of the Covenant and on the strength of which the defence might have moved for the trial to be aborted. Consequently, the Committee finds that there was a violation of article 14, paragraph 1, of the Covenant" (annex IX, sect. E, paras. 6.1-6.2). One member appended an individual opinion on this issue.

173. In case No. 815/1998 (*Dugin v. Russian Federation*), the Committee considered:

> "The author claims that his rights under article 14 were violated because he did not have the opportunity to cross-examine Chikin on his evidence, summon the expert and call additional witnesses. While efforts to locate Chikin proved to be ineffective for reasons not explained by the State party, very considerable weight was given to his statement, although the author was unable to cross-examine this witness. Furthermore, the Orlov Court did not give any reasons as to why it refused the author's request to summon the expert and call additional witnesses. These factors, taken together, lead the Committee to the conclusion that the courts did not respect the requirement of equality between prosecution and defence in producing evidence and that this amounted to a denial of justice. Consequently, the Committee concludes that the author's rights under article 14 have been violated" (annex IX, sect. F, para. 9.3). Two individual opinions were appended to the Committee's Views. Similar findings were made in case No. 911/2000 (*Nazarov v. Uzbekistan*).

174. In case No. 964/2001 (*Saidov v. Tajikistan*), the Committee found:

> "The Committee has noted the author's claim that her husband's right to a fair trial was violated, inter alia by the fact that the judge conducted the trial in a biased manner and refused even to consider the revocation of the confessions made by Mr. Saidov during the investigation. No explanation was provided by the State party for the reasons of that situation. Therefore, on the basis of the strength of the material before it, the Committee concludes that the facts as submitted before it reveal a violation of Mr. Saidov's rights under article 14, paragraph 1, of the Covenant" (annex IX, sect. U, para. 6.7).

175. In case No. 1015/2001 (*Perterer v. Austria*), the Committee considered:

> "With regard to the author's claim that several members of the trial senate in the third set of proceedings were biased against him, either because of their previous participation in the proceedings, the fact that they had already been challenged by the author, or because of their continued employment with the municipality of Saalfelden, the Committee recalls that 'impartiality' within the meaning of article 14, paragraph 1, implies that judges must not harbour preconceptions about the matter put before them, and that a trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be fair and impartial . The Committee notes that the fact that Mr. Cecon resumed chairmanship of the trial senate after having been challenged by the author during the same set of proceedings, pursuant to section 124, paragraph 3, of the Federal Civil Servants Act, raises doubts about the impartial character of the third trial senate. These doubts are corroborated by the fact that Mr. Maier was appointed substitute chairman and temporarily even chaired the senate, despite the fact that the author had previously brought criminal charges against him.
>
> "The Committee observes that, if the domestic law of a State party provides for a right of a party to challenge, without stating reasons, members of the body competent to adjudicate disciplinary charges against him or her, this procedural guarantee may not be rendered meaningless by the reappointment of a chairperson who, during the same stage of proceedings, had already relinquished chairmanship, based on the exercise by the party concerned of its right to challenge senate members.
>
> "The Committee also notes that, in its decision of 6 March 2000, the Appeals Commission failed to address the question of whether the decision of the Disciplinary Commission of 23 September 1999 had been influenced by the above procedural flaw, and to that extent merely endorsed the findings of the Disciplinary Commission . Moreover, while the Administrative Court examined this question, it only did so summarily . In the light of the above, the Committee considers that the third trial senate of the Disciplinary Commission did not possess the impartial character required by article 14, paragraph 1, of the Covenant and that the appellate instances failed to correct this procedural irregularity. It concludes that the author's right under article 14, paragraph 1, to an impartial tribunal has been violated.
>
> "With respect to the rejection by the Disciplinary Commission of the author's requests to call witnesses and to admit further evidence in his defence, the Committee recalls that, in principle, it is beyond its competence to determine whether domestic tribunals properly evaluate the relevance of newly requested evidence . In the Committee's view, the trial senate's decision that the author's evidentiary requests were futile because of the sufficient written evidence does not amount to a denial of justice, in violation of article 14, paragraph 1.
>
> "... Regarding the length of the disciplinary proceedings, the Committee considers that the right to equality before the courts, as guaranteed by article 14, paragraph 1, entails a number of requirements, including the condition that the procedure before the national tribunals must be conducted expeditiously enough so as not to compromise the principles of fairness and equality of arms. The Committee observes that responsibility for the delay of 57 months to adjudicate a matter of minor complexity lies with the authorities

of Austria. It also observes that non-fulfilment of this responsibility is neither excused by the absence of a request for the transfer of competence (*Devolutionsantrag*), nor by the author's failure to lodge a complaint about undue delay of proceedings (*Säumnisbeschwerde*), as it was primarily caused by the State party's failure to conduct the first two sets of proceedings in accordance with domestic procedural law. The Committee concludes that the author's right to equality before the courts and tribunals has been violated" (annex IX, sect. Z, paras. 10.2-10.5, 10.7).

176. In case No. 1117/2002 (*Khomidov v. Tajikistan*), the Committee found:

> "The author has claimed that the trial of Mr. Khomidov was unfair, as the court did not fulfil its obligation of impartiality and independence (see paragraphs 2.8 and 2.9 above). It has noted also the author's contention that her son's lawyer requested the court to call witnesses on his behalf, and to have Mr. Khomidov examined by a doctor to evaluate his injuries sustained as a result of the torture to which he was subjected to make him confess guilt. The judge denied his request without providing any reason. In the absence of any pertinent State party information on this claim, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (e) and (g), of the Covenant" (annex IX, sect. HH, para. 6.5).

177. The Committee found violation of the right to a fair trial in case No. 1033/2001 (*Singarasa v. Sri Lanka*).

(l) Right to be presumed innocent (Covenant, art. 14, para. 2)

178. Article 14 (2) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

179. In case No. 964/2001 (*Saidov v. Tajikistan*), the Committee considered:

> "The author further claimed that her husband's right to be presumed innocent until proved guilty has been violated, due to the extensive and adverse pre-trial coverage by State-directed media which designated the author and his co-charged as criminals, thereby negatively influencing the subsequent court proceedings. In the absence of information or objection from the State party in this respect, the Committee decides that due weight must be given to the author's allegations, and concludes that Mr. Saidov's rights under article 14, paragraph 2, have been violated" (annex IX, sect. U, para. 6.6).

(m) Right to be informed promptly and in detail of the nature and cause of the charge against oneself (Covenant, art. 14, para. 3 (a))

180. Article 14 (3) (a) provides that everyone charged with a criminal offence shall be informed promptly and in detail in a language which he/she understands of the nature and cause of the charge against him/her.

181. In case No. 1096/2002 (*Kurbanov v. Tajikistan*), the Committee took the view that the delay in presenting the charges to the detained author and in securing him legal assistance affected his possibilities to defend himself, in a manner that constituted a violation of article 14, paragraph 3 (a), of the Covenant.

(n) Right to adequate time and facilities for the preparation of one's defence (Covenant, art. 14, para. 3 (b))

182. Article 14 (3) (b) provides that everyone charged with a criminal offence shall have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

183. See cases Nos. 964/2001 (*Saidov v. Tajikistan*), 1117/2002 (*Khomidov v. Tajikistan*) and 1167/2003 (*Ramil Rayos v. The Philippines*).

(o) Right to be tried without undue delay (Covenant, art. 14, para. 3 (c))

184. Article 14 (3) (c) provides that everyone charged with a criminal offence shall be tried without undue delay. In case No. 1006/2001 (*Martínez Muñoz v. Spain*), the Committee recalled its constant jurisprudence that exceptional reasons must be shown to justify delays - in this case, five years - until trial. In the absence of any justification advanced by the State party for the delay, the Committee concluded, in the present case, that there was a violation of article 14, paragraph 3 (c), of the Covenant. Four members appended an individual opinion on this issue.

185. The Committee also found violation of article 14, paragraph 3 (c), of the Covenant in case No. 909/2002 (*Kankanamge v. Sri Lanka*).

(p) Right to legal assistance (Covenant, art. 14, para. 3 (d)) and right to examine, or have examined, the witnesses against oneself and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against oneself (Covenant, art. 14, para. 3 (e))

186. Article 14, paragraph 3 (d), provides for the right to legal defence and free legal assistance. In case No. 917/2000 (*Arutyunyan v. Uzbekistan*), the Committee considered:

> "The author alleges that her brother's right to defence was violated, because once counsel of his choice was allowed to represent him, the latter was prevented from seeing him confidentially; counsel was allowed to examine the Tashkent City Court's records only shortly before the hearing in the Supreme Court. In support of her allegations, the author produces a copy of the lawyer's request for an adjournment, addressed to the Supreme Court on 17 December 1999, this stated that under different pretexts, he had been denied access to the Tashkent City Court's records. This request was turned down by the Supreme Court. On appeal, counsel claimed that he was unable to meet privately with his client to prepare his defence; the Supreme Court failed to address this issue. In the absence of any pertinent observations from the State party on this claim, the Committee considers that article 14, paragraph 3 (d), has been violated in the instant case" (annex IX, sect. N, para. 6.3).

187. In case No. 964/2001 (*Saidov v. Tajikistan*), the Committee found:

> "As to the alleged violation of article 14, paragraph 3 (b), in that the author's husband was legally represented only towards the end of the investigation and not by counsel of his own choice, with no opportunity to consult his representative, and that, contrary to article 14, paragraph 3 (d), Mr. Saidov was not informed of his right to be represented by

> a lawyer upon arrest, and that his lawyer was frequently absent during the trial, the Committee once more regrets the absence of a relevant State party explanation. It recalls its jurisprudence that, particularly in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings. In the present case, the author's husband faced several charges which carried the death penalty, without any effective legal defence, although a lawyer had been assigned to him by the investigator. It remains unclear from the material before the Committee whether the author or her husband have requested a private lawyer, or have contested the choice of the assigned lawyer. However, and in the absence of any relevant State party explanation on this issue, the Committee reiterates that while article 14, paragraph 3 (d), does not entitle an accused to choose counsel free of charge, steps must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice. Accordingly, the Committee is of the view that the facts before it reveal a violation of Mr. Saidov's rights under article 14, paragraphs 3 (b) and (d), of the Covenant" (annex IX, sect. U, para. 6.8).

(q) Right not to be compelled to testify against oneself or to confess guilt (Covenant, art. 14, para. 3 (g))

188. In case No. 1096/2002 (***Kurbanov v. Tajikistan***), in light of the fact that the author's conviction was based on his confession obtained under duress, the Committee found a violation of article 14, paragraph 3 (g), of the Covenant.

189. In case No. 1033/2001 (*Nallaratnam v. Sri Lanka*), the Committee decided:

> "On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall 'be compelled to testify against himself or confess guilt', must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt. The Committee considers that it is implicit in this principle that *the prosecution* prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by 'inducement, threat or promise' are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in section 16 of the PTA. Even if, as argued by the State party, the threshold of proof is 'placed very low' and 'a mere possibility of involuntariness' would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before

> its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2 and 3 (g), read together with article 2, paragraphs 3 and 7, of the Covenant" (annex IX, sect. AA, para. 7.4).

(r) Right to appeal (Covenant, art. 14, para. 5)

190. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to have his/her conviction and sentence reviewed by a higher tribunal according to law.

191. In case No. 964/2001 (*Saidov v. Tajikistan*), the Committee considered:

> "The Committee has noted that the author's husband was unable to appeal his conviction and sentence by way of an ordinary appeal, because the law provides that a review of judgements of the Military Chamber of the Supreme Court is at the discretion of a limited number of high-level judicial officers. Such review, if granted, takes place without a hearing and is allowed on questions of law only. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, as long as the procedure allows for due consideration of the nature of the case. In the absence of any explanation from the State party in this regard, the Committee is of the opinion that the above-mentioned review of judgements of the Military Chamber of the Supreme Court, falls short of the requirements of article 14, paragraph 5, of the Covenant, and consequently, that there has been a violation of this provision in Mr. Saidov's case (annex IX, sect. V, para. 6.5).

192. The Committee also found violation of article 14, paragraph 5, in conjunction with paragraph 3 (c), of the Covenant in cases Nos. 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*) and 1033/2001 (*Singarasa v. Sri Lanka*).

(s) *Nullum crimen sine lege* (Covenant, art. 15, para. 1)

193. In case No. 1080/2002 (*Nicholas v. Australia*), the Committee found:

> "As to the claim under article 15, paragraph 1, the Committee observes that the law applicable at the time of that the acts in question took place, as subsequently held by the High Court in *Ridgeway v. The Queen*, was that the evidence of one element of the offences with which the author was charged, that is to say, the requirement that the prohibited materials possessed had been 'imported into Australia in contravention of the *Customs* Act', was inadmissible as a result of illegal police conduct. As a result, an order staying the author's prosecution was entered, which was a permanent obstacle to the criminal proceedings against the author on the (then) applicable law. Subsequent legislation, however, directed that the evidence of illegal police conduct in question be regarded as admissible by the courts. The two issues that thus arise are, firstly, whether the lifting of the stay on prosecution and the conviction of the author resulting from the

admission of the formerly inadmissible evidence is a retroactive criminalization of conduct not criminal, at the time it was committed, in violation of article 15, paragraph 1, of the Covenant. Secondly, even if there was no proscribed retroactivity, the question arises whether the author was convicted for an offence, the elements of which, in truth, were not all present in the author's case, and that the conviction was thus in violation of the principle of *nullum crimen sine lege*, protected by article 15, paragraph 1.

"As to the first question, the Committee observes that article 15, paragraph 1, is plain in its terms in that the offence for which a person is convicted to be an offence at the time of commission of the acts in question. In the present case, the author was convicted of offences under section 233B of the *Customs* Act, which provisions remained materially unchanged throughout the relevant period from the offending conduct through to the trial and conviction. That being so, while the procedure to which the author was subjected may raise issues under other provisions of the Covenant which the author has not invoked, the Committee considers that it therefore cannot conclude that the prohibition against retroactive criminal law in article 15, paragraph 1, of the Covenant was violated in the instant case.

"Turning to the second issue, the Committee observes that article 15, paragraph 1, requires any 'act or omission' for which an individual is convicted to constitute a 'criminal offence'. Whether a particular act or omission gives rise to a conviction for a criminal offence is not an issue which can be determined in the abstract; rather, this question can only be answered after a trial pursuant to which evidence is adduced to demonstrate that the elements of the offence have been proven to the necessary standard. If a necessary element of the offence, as described in national (or international) law, cannot be properly proven to have existed, then it follows that a conviction of a person for the act or omission in question would violate the principle of *nullum crimen sine lege*, and the principle of legal certainty, provided by article 15, paragraph 1.

"In the present case, under the State party's law as authoritatively interpreted in *Ridgeway v. The Queen* and then applied to the author, the Committee notes that it was not possible for the author to be convicted of the act in question, as the relevant evidence of the unlawful import of narcotics by the police was inadmissible in court. The effect of the definitive interpretation of domestic law, at the time the author's prosecution was stayed, was that the element of the crime under section 233B of the Customs Act that the narcotics had been imported illegally, could not be established due to the fact that although the import had been based on a ministerial agreement between the authorities of the State party exempting import of narcotics by the police from customs scrutiny, its illegality had not technically been removed and the evidence in question was hence inadmissible.

"While the Committee considers that changes in rules of procedure and evidence after an alleged criminal act has been committed, may under certain circumstances be relevant for determining the applicability of article 15, especially if such changes affect the nature of an offence, it notes that no such circumstances were presented in the author's case. As to his case, the Committee observes that the amending legislation did not remove the past illegality of the police's conduct in importing the narcotics. Rather, the law directed that the courts ignore, for the evidentiary purposes of determining admissibility of evidence, the illegality of the police conduct. Thus, the conduct of the police was illegal, at the time of importation, and remained so ever since, a fact unchanged by the absence of any prosecution against the officers engaging in the unlawful conduct. In the Committee's view, nevertheless, all of the elements of the crime in question existed at the time the offence took place and each of these elements were proven by admissible evidence by the rules applicable at the time of the author's conviction. It follows that the author was convicted according to clearly applicable law, and that there is thus no violation of the principle of *nullum crimen sine lege* protected by article 15, paragraph 1" (annex IX, sect. EE, paras. 7.3-7.7).

(t) Right to family and protection of children (Covenant, arts. 17, 23 and 24)

194. In case No. 1011/2001 (*Madafferi v. Australia*), the Committee found:

"As to a violation of article 17, the Committee notes the State party's arguments that there is no 'interference', as the decision of whether other members of the Madafferi family will accompany Mr. Madafferi to Italy or remain in Australia, is an issue for the family and is not influenced by the State party's actions. The Committee reiterates its jurisprudence that there may be cases in which a State party's refusal to allow one member of a family to remain in its territory would involve interference in that person's family life. However, the mere fact that one member of the family is entitled to remain in the territory of a State party does not necessarily mean that requiring other members of the family to leave involves such interference

"In the present case, the Committee considers that a decision by the State party to deport the father of a family with four minor children and to compel the family to choose whether they should accompany him or stay in the State party is to be considered 'interference' with the family, at least in circumstances where, as here, substantial changes to long-settled family life would follow in either case. The issue thus arises whether or not such interference would be arbitrary and thus contrary to article 17 of the Covenant. The Committee observes that in cases of imminent deportation the material point in time for assessing this issue must be that of its consideration of the case. It further observes that in cases where one part of a family must leave the territory of the State party while the other part would be entitled to remain, the relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must be considered, on the one hand, in light of the significance of the State party's reasons for the removal of the person concerned and, on the other, the degree of hardship the family and its members would encounter as a consequence of such removal. In the present case, the Committee notes that the State party justifies the removal of Mr. Madafferi by his illegal presence in Australia, his alleged dishonesty in his relations with the Department of Immigration and Multicultural Affairs, and his 'bad character' stemming from criminal acts committed in Italy 20 years ago. The Committee also notes that Mr. Madafferi's outstanding sentences in Italy have been extinguished and that there is no outstanding warrant for his arrest. At the same time, it notes the considerable hardship that would be imposed on a family that has been in existence for 14 years. If Mrs. Madafferi and the children were to decide to emigrate to Italy in order to avoid separation of the family, they would not only have to live in a country they do not know and whose language the children (two of whom are already 13 and 11 years old) do not speak, but would also have to take care, in an environment alien to them, of a husband and father whose mental health has been seriously troubled, in part by acts that can be ascribed to the State party. In these very specific circumstances, the Committee considers that the reasons advanced by the State party for the decision of the Minister overruling the Administrative Appeals Tribunal, to remove Mr. Madafferi from Australia are not pressing enough to justify, in the present case, interference to this extent with the family and infringement of the right of the children to such measures of protection as are required by their status as minors. Thus, the Committee considers that the removal by the State party of Mr. Madafferi would, if implemented, constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors" (annex IX, sect. Y, paras. 9.7-9.8). One member appended an individual opinion.

195. In case No. 1069/2002 (*Bakhtiyari v. Australia*), the Committee considered:

"As to the claim under articles 17 and 23, paragraph 1, the Committee observes that to separate a spouse and children arriving in a State from a spouse validly resident in a State may give rise to issues under articles 17 and 23 of the Covenant. In the present case, however, the State party contends that, at the time Mrs. Bakhtiyari made her application to the Minister under section 417 of the *Migration* Act, there was already information on Mr. Bakhtiyari's alleged visa fraud before it. As it remains unclear whether the attention of the State party's authorities was drawn to the existence of the relationship prior to that point, the Committee cannot regard it as arbitrary that the State party considered it inappropriate to unite the family at that stage. The Committee observes, however, that the State party intends at present to remove Mrs. Bakhtiyari and her children as soon as 'reasonably practicable', while it has no current plans to do so in respect of Mr. Bakhtyari, who is currently pursuing domestic proceedings. Taking into account the specific circumstances of the case, namely the number and age of the children, including a newborn, the traumatic experiences of Mrs. Bakhtiyari and the children in long-term immigration detention in breach of article 9 of the Covenant, the difficulties that Mrs. Bakhtiyari and her children would face if returned to Pakistan without Mr. Bakhtiyari and the absence of arguments by the State party to justify removal in these circumstances, the Committee takes the view that removing Mrs. Bakhtiyari and her children without awaiting the final determination of Mr. Bakhtiyari's proceedings would constitute arbitrary interference in the family of the authors, in violation of articles 17, paragraph 1, and 23, paragraph 1, of the Covenant.

"Concerning the claim under article 24, the Committee considers that the principle that in all decisions affecting a child, its best interests shall be a primary consideration, forms an integral part of every child's right to such measures of protection as required by his or her status as a minor, on the part of his or her family, society and the State, as required by article 24, paragraph 1, of the Covenant. The Committee observes that in this case children have suffered demonstrable, documented and ongoing adverse effects of detention suffered by the children, and in particular the two eldest sons, up until the point of release on 25 August 2003, in circumstances where that detention was arbitrary and in violation of article 9, paragraph 1, of the Covenant. As a result, the Committee considers that the measures taken by the State party had not, until the Full Bench of the Family Court determined it had welfare jurisdiction with respect to the children, been guided by

> the best interests of the children, and thus revealed a violation of article 24, paragraph 1, of the Covenant, that is, of the children's right to such measures of protection as required by their status as minors up to that point in time" (annex IX, sect. DD, para. 9.6).

(u) Freedom of opinion and expression (Covenant, art. 19)

196. Article 19 provides for the right to freedom of opinion and expression. According to paragraph 3 of article 19, the right to freedom of expression may only be restricted as provided by law and when necessary for respect of the rights of reputations of others or for the protection of national security or public order (ordre public), or of public health or morals.

197. In case No. 909/2000 (*Kankanamge v. Sri Lanka*), the Committee found:

> "So far as a violation of article 19 is concerned, the Committee considers that the indictments against Mr. Kankanamge all related to articles in which he allegedly defamed high State party officials and are directly attributable to the exercise of his profession of journalist and, therefore, to the exercise of his right to freedom of expression. Having regard to the nature of the author's profession and in the circumstances of the present case, including the fact that previous indictments against the author were either withdrawn or discontinued, the Committee considers that to keep pending, in violation of article 14, paragraph 3 (c), the indictments for the criminal offence of defamation for a period of 6 years and a half since the entry into force of the Optional Protocol for the State party left the author in a situation of uncertainty and intimidation, despite the author's efforts to have them terminated, and thus had a chilling effect which unduly restrict the author's exercise of his right to freedom of expression. The Committee concludes that the facts before it reveal a violation of article 19 of the Covenant, read together with article 2 (3)" (annex IX, sect. K, para. 9.4).

198. In case No. 920/2000 (*Lovell v. Australia*), the Committee considered:

> "With regard to the author's claim under article 19, paragraph 2, that he was convicted and fined for publishing documents that had been referred to in an open court, the Committee recalls that article 19, paragraph 2, guarantees the right to freedom of expression and includes the 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media'. It considers that the author, by publishing documents that were referred to in an open court, by virtue of different media, was exercising his right to impart information within the meaning of article 19, paragraph 2.
>
> "The Committee observes that any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve the legitimate purpose.
>
> "The Committee notes that the institution of contempt of court is an institution provided by law restricting freedom of expression for achieving the aim of protecting the right of confidentiality of a party to the litigation or the integrity of the court or public order. Here in the present case, though the five documents were directed to be discovered on the application of the author and CEPU, they were not allowed to be adduced in evidence

with the result that they did not become part of the published record of the case. It may be noted that these five documents were not read aloud in court and their contents were not made known to anyone except the parties to the litigation and their lawyers. There was clearly, in the circumstances, a restriction on the publication of these five documents, implied from the refusal of the court to allow them to be adduced in evidence and not taking them as part of the public record of the case. This restriction was provided by the law of contempt of court and it was necessary for achieving the aim of protecting the rights of, others, i.e. Hamersley, or for the protection of public order (ordre public). The Committee accordingly concludes that the author's conviction for contempt was a permissible restriction of his freedom of expression, in accordance with article 19, paragraph 3, and that there has been no violation of article 19, paragraph 2, of the Covenant" (annex IX, sect. O, paras. 9.2-9.4).

199. In case No. 926/2000 (*Shin v. Republic of Korea*), the Committee found:

"The Committee observes that the picture painted by the author plainly falls within the scope of the right of freedom of expression protected by article 19, paragraph 2; it recalls that this provision specifically refers to ideas imparted 'in the form of art'. Even if the infringement of the author's right to freedom of expression, through confiscation of his painting and his conviction for a criminal offence, was in the application of the law, the Committee observes that the State party must demonstrate the necessity of these measures for one of the purposes enumerated in article 19 (3). As a consequence, any restriction on that right must be justified in terms of article 19 (3), i.e. besides being provided by law it also must be necessary for respect of the right or reputations of others, or for the protection of national security or public order (ordre public) or of public health and morals ('the enumerated purposes').

"The Committee notes that the State party's submissions do not seek to identify which of these purposes are applicable, much less the necessity thereof in the particular case; it may however be noted that the State party's superior courts identified a national security basis as justification for confiscation of the painting and the conviction of the author. As the Committee has consistently found, however, the State party must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes caused by the author's conduct, as well as why seizure of the painting and the author's conviction were necessary. In the absence of such justification, a violation of article 19, paragraph 2, will be made out ... In the absence of any individualized justification therefore of why the measures taken were necessary in the present case for an enumerated purpose, therefore, the Committee finds a violation of the author's right to freedom of expression through the painting's confiscation and the author's conviction" (annex IX, sect. P, paras. 7.2-7.3).

200. In case No. 927/2000 (*Svetik v. Belarus*), the Committee considered:

"The author claims that his right under article 19 has been violated, as he was subjected to an administrative penalty for the sole expression of his political opinion. The State party only objects that the author was sentenced in compliance with the applicable law, and that, pursuant to paragraph 3 of article 19, the rights protected by paragraph 2 are subject to limitations. The Committee recalls that article 19 allows restrictions only to the extent that they are provided by law and only if they are necessary

(a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (ordre public), or of public health or morals’. The Committee thus has to decide whether or not punishing a call to boycott a particular election is a permissible limitation of the freedom of expression.

"The Committee recalls that according to article 25 (b), every citizen has the right to vote. In order to protect this right, States parties to the Covenant should prohibit intimidation or coercion of voters by penal laws and those laws should be strictly enforced. The application of such laws constitutes, in principle, a lawful limitation of the freedom of expression, necessary for respect of the rights of others. However, intimidation and coercion must be distinguished from encouraging voters to boycott an election. The Committee notes that voting was not compulsory in the State party concerned and that the declaration signed by the author did not affect the possibility of voters to freely decide whether or not to participate in the particular election. The Committee concludes that in the circumstances of the present case the limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3, of the Covenant and that the author's rights under article 19, paragraph 2, of the Covenant have been violated (annex IX, sect. Q, paras. 7.2-7.3). One individual opinion was appended to the Committee's Views.

(v) Freedom of association (Covenant, art. 22)

201. In case No. 1002/2001 (*Wallmann v. Austria*), the Committee considered:

"The issue before the Committee is whether the imposition of annual membership fees on the 'Hotel zum Hirschen' (third author) by the Salzburg Regional Chamber of Commerce amounts to a violation of the second author's right to freedom of association under article 22 of the Covenant.

"The Committee has noted the authors' contention that, although the Chamber of Commerce constitutes a public law organization under Austrian law, its qualification as an 'association' within the meaning of article 22, paragraph 1, of the Covenant has to be determined on the basis of international standards, given the numerous non-public functions of the Chamber. It has equally taken note of the State party's argument that the Chamber forms a public organization under Austrian law, on account of its participation in matters of public administration as well as its public interest objectives, therefore not falling under the scope of application of article 22.

"The Committee observes that the Austrian Chamber of Commerce was founded by law rather than by private agreement, and that its members are subordinated by law to its power to charge annual membership fees. It further observes that article 22 of the Covenant only applies to private associations, including for purposes of membership.

"The Committee considers that once the law of a State party establishes commerce chambers as organizations under public law, these organizations are not precluded by article 22 of the Covenant from imposing annual membership fees on its members, unless such establishment under public law aims at circumventing the guarantees contained in article 22. However, it does not appear from the material before the Committee that the qualification of the Austrian Chamber of Commerce as a public law organization, as envisaged in the Austrian Constitution as well as in the Chamber of Commerce Act of 1998, amounts to a circumvention of article 22 of the Covenant. The Committee therefore concludes that the third author's compulsory membership in the Austrian Chamber of Commerce and the annual membership fees imposed since 1999 do not constitute an interference with the second author's rights under article 22" (annex IX, sect. W, paras. 9.2-9.5).

(w) The right to equality before the law and the prohibition of discrimination (Covenant, art. 26)

202. Article 26 of the Covenant guarantees equality before the law and prohibits discrimination.

203. In case No. 976/2001 (*Derksen v. The Netherlands*), the Committee considered:

> "The first question before the Committee is whether the author of the communication is a victim of a violation of article 26 of the Covenant, because the new legislation which provides for equal benefits to married and unmarried dependants whose partner has died is not applied to cases where the unmarried partner has died before the effective date of the new law. The Committee recalls its jurisprudence concerning earlier claims of discrimination against the Netherlands in relation to social security legislation. The Committee reiterates that not every distinction amounts to prohibited discrimination under the Covenant, as long as it is based on reasonable and objective criteria. The Committee recalls that it has earlier found that a differentiation between married and unmarried couples does not amount to a violation of article 26 of the Covenant, since married and unmarried couples are subject to different legal regimes and the decision whether or not to enter into a legal status by marriage lies entirely with the cohabitating persons. By enacting the new legislation the State party has provided equal treatment to both married and unmarried cohabitants for purposes of surviving dependants' benefits. Taking into account that the past practice of distinguishing between married and unmarried couples did not constitute prohibited discrimination, the Committee is of the opinion that the State party was under no obligation to make the amendment retroactive. The Committee considers that the application of the legislation to new cases only does not constitute a violation of article 26 of the Covenant.
>
> "The second question before the Committee is whether the refusal of benefits for the author's daughter constitutes prohibited discrimination under article 26 of the Covenant. The State party has explained that it is not the status of the child that determines the allowance of benefits, but the status of the surviving parent of the child, and that the benefits are not granted to the child but to the parent. The author, however, has argued that, even if the distinction between married and unmarried couples does not constitute discrimination because different legal regimes apply and the choice lies entirely with the partners whether to marry or not, the decision not to marry cannot affect the parents' obligations towards the child and the child has no influence on the parents' decision. The Committee recalls that article 26 prohibits both direct and indirect discrimination, the latter notion being related to a rule or measure that may be neutral on its face without any intent to discriminate but which nevertheless results in discrimination because of its exclusive or disproportionate adverse effect on a certain category of persons. Yet, a distinction only constitutes prohibited discrimination in the meaning of article 26 of the

> Covenant if it is not based on objective and reasonable criteria. In the circumstances of the present case, the Committee observes that under the earlier AWW the children's benefits depended on the status of the parents, so that if the parents were unmarried, the children were not eligible for the benefits. However, under the new ANW, benefits are being denied to children born to unmarried parents before 1 July 1996 while granted in respect of similarly situated children born after that date. The Committee considers that the distinction between children born, on the one hand, either in wedlock or after 1 July 1996 out of wedlock, and, on the other hand, out of wedlock prior to 1 July 1996, is not based on reasonable grounds. In making this conclusion the Committee emphasizes that the authorities were well aware of the discriminatory effect of the AWW when they decided to enact the new law aimed at remedying the situation, and that they could have easily terminated the discrimination in respect of children born out of wedlock prior to 1 July 1996 by extending the application of the new law to them. The termination of ongoing discrimination in respect of children who had had no say in whether their parents chose to marry or not, could have taken place with or without retroactive effect. However, as the communication has been declared admissible only in respect of the period after 1 July 1996, the Committee merely addresses the failure of the State party to terminate the discrimination from that day onwards which, in the Committee's view, constitutes a violation of article 26 in regard of Kaya Marcelle Bakker in respect of whom half orphan's benefits through her mother was denied under the ANW" (annex IX, sect. V, paras. 9.2-9.3). Two members appended individual opinions on this issue.

204. In case No. 1136/2002 (*Borzov v. Estonia*), the Committee considered:

> "Turning to the substance of the admissible claim under article 26, the Committee refers to its jurisprudence that an individual may be deprived of his right to equality before the law if a provision of law is applied to him or her in arbitrary fashion, such that an application of law to an individual's detriment is not based on reasonable and objective grounds. In the present case, the State party has invoked national security, a ground provided for by law, for its refusal to grant citizenship to the author in the light of particular personal circumstances.
>
> "While the Committee recognizes that the Covenant explicitly permits, in certain circumstances, considerations of national security to be invoked as a justification for certain actions on the part of a State party, the Committee emphasizes that invocation of national security on the part of a State party does not, ipso facto, remove an issue wholly from the Committee's scrutiny. Accordingly, the Committee's decision in the particular circumstances of *V.M.R.B.*[3] should not be understood as the Committee divesting itself of the jurisdiction to inquire, as appropriate, into the weight to be accorded to an argument of national security. While the Committee cannot leave it to the unfettered discretion of a State party whether reasons related to national security existed in an individual case, it recognizes that its own role in reviewing the existence and relevance of such considerations will depend on the circumstances of the case and the relevant provision of the Covenant. Whereas articles 19, 21 and 22 of the Covenant establish a criterion of necessity in respect of restrictions based on national security, the criteria under article 26 are more general in nature, requiring reasonable and objective justification and a legitimate aim for distinctions that relate to an individual's characteristics enumerated in article 26, including 'other status'. The Committee accepts that considerations related to

> national security may serve a legitimate aim in the exercise of a State party's sovereignty in the granting of its citizenship, at least where a newly independent State invokes national security concerns related to its earlier status.
>
> "In the present case, the State party concluded that a grant of citizenship to the author would raise national security issues generally on account of the duration and level of the author's military training, his rank and background in the armed forces of the then USSR. The Committee notes that the author has a residence permit issued by the State party and that he continues to receive his pension while living in Estonia. Although the Committee is aware that the lack of Estonian citizenship will affect the author's enjoyment of certain Covenant rights, notably those under article 25, it notes that neither the Covenant nor international law in general spells out specific criteria for the granting of citizenship through naturalization, and that the author did enjoy a right to have the denial of his citizenship application reviewed by the courts of the State party. Noting, furthermore, that the role of the State party's courts in reviewing administrative decisions, including those decided with reference to national security, appears to entail genuine substantive review, the Committee concludes that the author has not made out his case that the decision taken by the State party with respect to the author was not based on reasonable and objective grounds. Consequently, the Committee is unable, in the particular circumstances of this case, to find a violation of article 26 of the Covenant" (annex IX, sect. II, para. XXX).

F. Remedies called for under the Committee's Views

205. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5, paragraph 4, of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation, such as commutation of sentence, release, or providing adequate compensation for the violation suffered. When pronouncing on a remedy, the Committee observes that:

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."

206. During the period under review and with respect to case No. 868/1999 (*Wilson v. The Philippines*), the Committee found violations of articles 7 (physical mistreatment during detention), 9 (guarantees during arrest) and 10 (conditions of detention), and decided:

> "... the State party is under an obligation to provide the author with an effective remedy. In respect of the violations of article 9 the State party should compensate the author. As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the

> violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible. As to the imposition of immigration fees and visa exclusion, the Committee takes the view that in order to remedy the violations of the Covenant the State party should refund to the author the moneys claimed from him. All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future" (annex IX, sect. H, para. 9).

207. In case No. 962/2001 (*Mulezi v. Democratic Republic of the Congo*), the Committee found violations of articles 6, 7, 9, paragraphs 1, 2 and 4; 10, paragraph 1, and 23, paragraph 1, of the Covenant and decided:

> "… the State party has an obligation to ensure that the author has an effective remedy available. The Committee therefore urges the State party (a) to conduct a thorough investigation of the unlawful arrest, and mistreatment of the author and the killing of his wife; (b) to bring to justice those responsible for these violations; and (c) to grant Mr. Mulezi appropriate compensation for the violations …" (annex IX, sect. T, para. 7).

208. In case No. 938/2000 (*Girjadat Siewpersaud et al. v. Trinidad and Tobago*), the Committee found violations of articles 9, paragraph 3, 10, paragraph 1, and article 14, paragraph 5 in conjunction with paragraph 3 (c), of the Covenant, and decided:

> "… the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long period spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay" (annex IX, sect. R, para. 8).

209. In case No. 793/1998 (*Pryce v. Jamaica*), the Committee found that the imposition of a sentence of whipping with a tamarind switch on the author constituted a violation of article 7, as did the manner in which the sentenced was executed. The Committee considered that the author was entitled to an appropriate remedy including compensation. It also decided that the State party was under an obligation to repeal domestic legislative provisions that allowed for corporal punishment.

210. In case No. 1090/2002 (*Rameka v. New Zealand*), the Committee found a violation of article 9, paragraph 4, and decided that the State party was under an obligation to provide the author with an effective remedy, "… including the ability to challenge the justification of his continued detention for preventive purposes once the seven and half year period of punitive sentence has been served …" (annex IX, sect. FF, para. 9).

211. In case No. 1006/2001 (*Martínez Muñoz v. Spain*), the Committee found that there had been undue delays in the author's trial, and recommended adequate compensation.

212. In cases Nos. 815/1998 (*Dugin v. Russian Federation*) and 911/2000 (*Nazarov v. Uzbekistan*), the Committee found a denial of justice and recommended an appropriate remedy, including compensation and the authors' immediate release.

213. In cases where a request for interim measures, pursuant to rule 86 of the Committee's rules of procedure, was transmitted to the State party namely cases Nos. 811/1998 (*Mulai v. Republic of Guyana*), 917/2000 (*Arutyunyan v. Uzbekistan*), 926/2000 (*Shin v. Republic of Korea*), 1069/2002 (*Bakhtiyari v. Australia*), 1096/2002 (*Kurbanov v. Tajikistan*), 1117/2002 (*Khomidov v. Tajikistan*) and 1167/2003 (*Ramil Rayos v. The Philippines*), the Committee formulated specific recommendations for reparation based on its findings. In case No. 1069/2002 (*Bakhtiyari v. Australia*), the Committee decided:

> "… the State party is under an obligation to provide the authors with an effective remedy. As to the violation of article 9, paragraphs 1 and 4, continuing up to the present time with respect to Mrs. Bakhtiyari, the State party should release her and pay her appropriate compensation. So far as concerns the violations of articles 9 and 24 suffered in the past by the children, which came to an end with their release on 25 August 2003, the State party is under an obligation to pay appropriate compensation to the children. The State party should also refrain from deporting Mrs. Bakhtiyari and her children while Mr. Bakhtiyari is pursuing domestic proceedings, as any such action on the part of the State party would result in violations of articles 17, paragraph 1, and 23, paragraph 1, of the Covenant" (annex IX, sect. DD, para. 11).

214. In case No. 1096/2002 (*Kurbanov v. Tajikistan*), the Committee found that the author was condemned to death in violation of the right to a fair trial, and decided:

> "… the author's son is entitled to an effective remedy entailing compensation and a new trial before an ordinary court and with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future" (annex IX, sect. GG, para. 9).

215. In case No. 811/1998 (*Mulai v. Republic of Guyana*), in which the authors were sentenced to death upon conclusion of a trail in which article 14, paragraph 1, was violated, the Committee decided that the State party was under an obligation to provide the authors with an effective remedy, including commutation of their death sentences. A similar remedy was decided by the Committee in case No. 1167/2003 (*Ramil Rayos v. The Philippines*).

216. In case No. 917/2000 (*Arutyunyan v. Uzbekistan*), in which the author's initial death sentence was later commuted in a period of 20 years' imprisonment, the Committee found violations of articles 10, paragraph 1 (conditions of detention) and 14, paragraph 3 (d) (unfair trial), and decided:

> "… the State party is under an obligation to provide Mr. Arutyunyan with an effective remedy, which could include consideration of a further reduction of his sentence and compensation. The State party is under an obligation to take measures to prevent similar violations in the future" (annex IX, sect. N, para. 8).

217. In case No. 1117/2002 (*Khomidov v. Tajikistan*), in which the author was sentenced to death, the Committee found violations of articles 7, 9, paragraphs 1, 3 (b), (e) and (g), read together with article 6 of the Covenant, the Committee decided:

> "... the State party is under an obligation to provide Mr. Khomidov with an effective remedy, entailing commutation of his sentence to death, a compensation, and a new trial with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future" (annex IX, sect. HH, para. 8).

218. In case No. 926/2000 (*Shin v. Republic of Korea*), in which the State party's superior courts identified a national security basis as justification for confiscation of the author's painting and for his conviction, the Committee found a violation of article 19, paragraph 2, and decided:

> "... the State party is under an obligation to provide the author with an effective remedy, including compensation for his conviction, annulment of his conviction, and legal costs. In addition, as the State party has not shown that any infringement on the author's freedom of expression, as expressed through the painting, is justified, it should return the painting to him in its original condition, bearing any necessary expenses incurred thereby. The State party is under an obligation to avoid similar violations in the future" (annex IX, sect. P, para. 9).

219. In case No. 909/2000 (*Kankanamge v. Sri Lanka*), the Committee found violations of articles 14, 3 (c) and 19 read together with article 2 (3), of the Covenant, and decided that the State party was under an obligation to provide the author with an effective remedy, including payment of appropriate compensation.

220. In case No. 927/2000 (*Svetik v. Belarus*), in which the author was subjected to an administrative penalty for his signature of an open letter calling for the boycott of local elections, the Committee found a violation of article 19, paragraph 2, of the Covenant, and decided that the State party was under an obligation to provide the author with an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.

221. In case No. 888/1999 (*Telitsin v. Russian Federation*), the Committee considered:

> "... the author, who has lost her son, is entitled to an effective remedy. The Committee invites the State party to take effective measures (a) to conduct an appropriate, thorough and transparent inquiry into the circumstances of the death of Mr. Vladimir Nikolayevich Telitsin; and (b) to grant the author appropriate compensation ..." (annex IX, sect. I, para. 9).

222. In case No. 1051/2002 (*Ahani v. Canada*), the Committee found that the State party breached its obligations under the Optional Protocol by deporting the author before the Committee's determination of his claim and violated article 9, paragraph 4, and article 13, in conjunction with article 7 of the Covenant. It decided:

> "the State party is under an obligation to provide the author with an effective remedy, including compensation. In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, the State party. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected" (annex IX, sect. BB, para. 12).

223. In case No. 1011/2001 (***Madafferi v. Australia***), the Committee found that the State party violated the author's rights under article 10, paragraph 1, of the Covenant and that the removal by the State party of the author would, if implemented, constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors. It decided:

> "the State party is under an obligation to provide the author with an effective and appropriate remedy, including refraining from removing Mr. Madafferi from Australia before he has had the opportunity to have his spouse visa examined with due consideration given to the protection required by the children's status as minors. The State party is under an obligation to avoid similar violations in the future" (annex IX, sect. Y, para. 11).

224. States' compliance with the Committee's Views is monitored by the Committee through its follow-up procedure, as described in chapter VI of the present report.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 40* (A/52/40), vol. I, para. 467.

[2] Ibid., para. 469.

[3] Case No. 236/1987 (*V.M.R.B. v. Canada*).

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

225. From its seventh session, in 1979, to the conclusion of its eighty-first session, in August 2004, the Human Rights Committee has adopted 476 Views on communications considered under the Optional Protocol. The Committee found violations in 369 of them.

226. During its thirty-ninth session, in July 1990, the Committee established a procedure whereby it could monitor the follow-up to its Views under article 5, paragraph 4, and it created the mandate of the Special Rapporteur for the follow-up on Views.[1] Mr. Ando has been the Special Rapporteur since the Committee's seventy-first session in March 2001.

227. The Special Rapporteur began to request follow-up information from States parties in 1991. Follow-up information has been systematically requested in respect of all Views with a finding of a violation of the Covenant. Attempts to categorize follow-up replies by States parties are necessarily subjective and imprecise; as a result, it is not possible to provide a neat statistical breakdown of follow-up replies. Many of the replies received could be considered satisfactory in that they displayed the State party's willingness to implement the Committee's Views or to offer the applicant an appropriate remedy. Some replies cannot be considered satisfactory because they either do not address the Committee's Views at all or merely relate to certain aspects of them. Certain replies simply indicate that the victim has failed to file a claim for compensation within statutory deadlines and that no compensation can therefore be paid.

228. The remainder of the replies explicitly challenge the Committee's findings on factual or legal grounds, constitute much-belated submissions on the merits of the case, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

229. In many instances, the secretariat has also received information from authors to the effect that the Committee's Views were not implemented. Conversely, in rare instances, the author of a communication has informed the Committee that the State party had given effect to the Committee's recommendations, although the State party had not itself provided that information.

230. The previous annual report of the Committee[2] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

Angola: Views in one case with findings of violations:

711/1996 - *Dias* (A/55/40); no follow-up reply received despite consultations with the Special Rapporteur during the seventy-fourth session. See also A/57/40, paragraphs 228 and 231. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a further reminder for information on follow-up be sent to the State party.

Argentina: Views in one case with findings of violations:

400/1990 - *Mónaco de Gallichio* (A/50/40); for follow-up reply, see A/51/40, paragraph 455.

Australia: Views in 10 cases with findings of violations:

488/1992 - *Toonen* (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - *A.* (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

802/1998 - *Rogerson* (A/58/40); no follow-up reply required because the Committee considered the finding of a violation to be a sufficient remedy; this was affirmed by the State party in its follow-up reply, see paragraph 229 above; for the same reason, in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during the eightieth session, the Special Rapporteur recommended that this case should not be considered under the follow-up procedure;

900/1999 - *C.* (A/58/40); for follow-up reply see A/58/40, paragraph 225. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the State party be reminded to furnish its follow-up reply;

930/2000 - *Winata et al.* (A/56/40); for follow-up replies, see A/56/40, paragraph 232. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the State party be reminded to furnish its reply;

941/2000 - *Young* (A/58/40); for follow-up reply see paragraph 230 above;

1014/2001 - *Baban et al.* (A/58/40); follow-up reply not yet received;

1020/2001 - *Cabal and Pasini* (A/58/40); for follow-up reply see paragraph 231 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered any further under the follow-up procedure;

1069/2002 - *Bakhitiyari* (annex IX); follow-up reply not yet due;

1011/2002 - *Madaferri* (annex IX); follow-up reply not yet due.

Austria: Views in six cases with findings of violations:

415/1990 - *Pauger* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

716/1996 - *Pauger* (A/54/40); for follow-up reply, see A/55/40, paragraph 606, A/57/40, paragraph 233, and A/58/40, paragraph 226; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that while he welcomed the State party's decision to amend its legislation, the State party should reconsider its decision not to implement the Committee's Views and look into other possibilities of providing the author with a remedy;

965/2001 - *Karakurt* (A/57/40); for follow-up reply, see A/58/40, paragraph 227; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party;

998/2001 - *Althammer et al.* (A/58/40); follow-up reply not yet received;

1086/2002 - *Weiss* (A/58/40); for follow-up reply, see A/58/40, paragraph 228 and paragraph 232 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that an update on the proceedings before the Supreme Court and any reaction from the United States judicial authorities be requested of the State party. The State party submission of 4 August 2004 provides the update requested;

1015/2001 - *Perterer* (annex IX); follow-up not yet due.

Belarus: Views in six cases with findings of violations:

780/1997 - *Laptsevich* (A/55/40); for follow-up reply, see A/56/40, paragraph 185, A/57/40, paragraph 234;

814/1998 - *Pastukhov* (A/58/40); see paragraph 233 below for follow-up reply from author;

886/1999 - *Bondarenko* (A/58/40); no follow-up reply received; by letter of 20 August 2003, the State party informed the Committee that the competent authorities of Belarus were carefully examining the Views and will provide information in the "nearest future";

887/1999 - *Lyashkevich* (A/58/40); no follow-up reply received; by letter of 20 August 2003, the State party informed the Committee that the competent authorities of Belarus were carefully examining the Views and will provide information in the "nearest future";

921/2000 - *Dergachev* (A/57/40); no follow-up reply received. Despite follow-up consultations having taken place during the seventy-ninth session, no replies have been received. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for replies be sent to the State party;

927/2000 - *Svetik* (annex IX); follow-up not yet due.

Bolivia: Views in two cases with findings of violations:

176/1984 - *Peñarrieta* (A/43/40); for follow-up reply, see A/52/40, paragraph 530;

336/1988 - *Fillastre and Bizouarne* (A/47/40); for follow-up reply, see A/52/40, paragraph 531.

Cameroon: Views in two cases with findings of violations:

458/1991 - *Mukong* (A/49/40); follow-up reply remains outstanding. See A/52/40, paragraphs 524 and 532;

630/1995 - *Mazou* (A/56/40); for follow-up reply, see A/57/40, paragraph 235. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered further under the follow-up procedure as the State party had complied with the Views.

Canada: Views in 11 cases with findings of violations:

24/1977 - *Lovelace* (in *Selected Decisions*, vol. 1); for State party's follow-up reply, see *Selected Decisions*, volume 2, annex I;

27/1978 - *Pinkney* (in *Selected Decisions*, vol. 1); no follow-up reply received;

167/1984 - *Ominayak* (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - *Ballantyne and Davidson* and 385/1989 - *McIntyre* (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - *Singer* (A/49/40); no follow-up reply required;

469/1991 - *Ng* (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - *Gauthier* (A/54/40); for follow-up reply, see A/55/40, paragraph 607, A/56/40, paragraph 186 and A/57/40, paragraph 236. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a copy of the independent expert's report should be requested of the State party. This report was provided to the Special Rapporteur after consultations with the State party during the eighty-first session. Subsequently, the Special Rapporteur recommended to the Committee that this case should no longer be considered under the follow-up procedure;

694/1996 - *Waldman* (A/55/40); for follow-up reply, see A/55/40, paragraph 608, A/56/40, paragraph 187 and A/57/40, paragraph 237 and paragraph 234 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a meeting should be arranged with a State party representative. During the eighty-first session follow-up consultations were held during which the State party's representative reiterated the State party's position expressed in previous correspondence;

829/1998 - *Judge* (A/58/40); for follow-up, see paragraph 235 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a further update on the author's situation in the United States should be requested of the State party. Following consultations between the State party and the Special Rapporteur during the eighty-first session, the State party's representative indicated his intention to provide the Special Rapporteur with further information, to the extent possible, of the author's current situation in the United States;

1051/2002 - *Ahani* (annex IX); follow-up reply not yet due.

Central African Republic: Views in one case with findings of violations:

428/1990 - *Bozize* (A/49/40); for follow-up reply, see A/51/40, paragraph 457.

Colombia: Views in 14 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441 and A/52/40, paragraphs 533-535;

563/1993 - *Bautista* (A/52/40); follow-up reply in A/58/40 paragraph 229. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered further under the follow-up procedure as the State party has complied with the Views;

612/1995 - *Arhuacos* (A/52/40); no follow-up reply received despite follow-up consultations having been held during the sixty-seventh and seventy-fifth sessions;

687/1996 - *Rojas García* (A/56/40); see A/58/40, paragraph 230; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request be made to the State party for information on the issue of compensation;

778/1997 - *Coronel et al.* (A/58/40); see A/58/40, paragraph 231 and paragraph 237 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request be made to the State party for information on the issue of compensation and the criminal proceedings against the perpetrators;

848/1999 - *Rodríguez Orejuela* (A/57/40); see A/58/40, paragraph 232 and 859/1999 - *Jiménez Vaca* (A/57/40); see A/58/40, paragraph 233 and paragraph 238 below for follow-up reply from the author; follow-up consultations were held during the seventy-ninth session, during which the State party representatives provided detailed reasons why both of these cases should be "reconsidered" by the Committee and provided submissions from the State party to this effect; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur noted the State party's objections to the Committee's Views and explained that there is no provision for their reconsideration.

Croatia: Views in one case with findings of violations:

727/1996 - *Paraga* (A/56/40); for follow-up reply, see A/56/40, paragraph 188 and A/58/40, paragraph 234; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur, recommended that the State party be requested to provide an update on the proceedings mentioned in its follow-up reply.

Czech Republic: Views in eight cases with findings of violations:

516/1992 - *Simunek et al.* (A/50/40); see A/57/40, paragraph 238 and A/58/40, paragraph 235;

586/1994 - *Adam* (A/51/40); for follow-up replies, see A/51/40, paragraph 458. One author (in *Simunek*) has confirmed that the Committee's recommendations were implemented partially; the others complained that their property was not restored to them or that they were not compensated; follow-up consultations were held during the sixty-first and sixty-sixth sessions (see A/53/40, para. 492 and A/54/40, para. 465); see also A/57/40, paragraph 238;

857/1999 - *Blazek et al.* (A/56/40); see A/57/40, paragraph 238;

765/1997 - *Fábryová* (A/57/40); see A/57/40, paragraph 238 and A/58/40, paragraph 237;

774/1997 - *Brok* (A/57/40); see A/57/40, paragraph 238 and A/58/40, paragraph 237;

747/1997 - *Des Fours Walderode* (A/57/40); for follow-up reply, see A/57/40, paragraph 238, A/58/40, paragraph 236 and paragraph 239 below;

757/1997 - *Pezoldova* (A/58/40); follow-up reply not yet received;

946/2000 - *Patera* (A/57/40); see the author's submission, A/58/40, paragraph 238.

See also chapter VII - Follow-up to concluding observations for the State party's reply.

Democratic Republic of the Congo: Views in 13 cases with findings of violations:

16/1977 - *Mbenge et al.*; see A/57/40, paragraph 239;

90/1981 - *Luyeye*;

124/1982 - *Muteba*;

138/1983 - *Mpandanjila et al.*;

157/1983 - *Mpaka Nsusu* and 194/1985 - *Miango* (*Selected Decisions*, vol. 2);

241/1987 and 242/1987 - *Birindwa and Tshisekedi* (A/45/40);

366/1989 - *Kanana* (A/49/40);

542/1993 - *Tshishimbi* (A/51/40);

641/1995 - *Gedumbe* (A/57/40); no follow-up reply received;

933/2000 - *Adrien Mundyo Busyo, Thomas Ostudi Wongodi, René Sibu Matubuka et al.* (A/58/40); see paragraph 240 below for author's reply;

962/2001 - *Marcel Mulezi* (annex IX); follow-up not yet due.

No follow-up reply has been received in respect of any of the above cases, in spite of repeated reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of the State party, with a view to discussing follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of the State party to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent Mission, who agreed to transmit the Special Rapporteur's concerns to the capital and provide a written response. No replies have been received. Despite follow-up consultations having been held again during the seventy-ninth session, replies are still pending. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that further reminders should be sent to the State party.

Dominican Republic: Views in three cases with findings of violations:

188/1984 - *Portorreal* (in *Selected Decisions*, vol. 2); for State party's follow-up reply, see A/45/40, volume II, annex XII;

193/1985 - *Giry* (A/45/40);

449/1991 - *Mojica* (A/49/40); follow-up reply in the latter two cases has been received but is incomplete in respect of *Giry*. Follow-up consultations with the Permanent Mission of the Dominican Republic to the United Nations were conducted during the fifty-seventh and fifty-ninth sessions (see A/52/40, para. 538). No further reply has been received.

Ecuador: Views in five cases with findings of violations:

238/1987 - *Bolaños* (A/44/40); for follow-up reply, see A/45/40, volume II, annex XII, section B;

277/1988 - *Terán Jijón* (A/47/40); follow-up reply, dated 11 June 1992, unpublished;

319/1988 - *Cañón García* (A/47/40); no follow-up reply received;

480/1991 - *Fuenzalida* (A/51/40);

481/1991 - *Ortega* (A/52/40); for follow-up reply in the latter two cases, dated 9 January 1998, see A/53/40, paragraph 494. Follow-up consultations with the Permanent Mission of Ecuador to the United Nations Office at Geneva were conducted during the sixty-first session (see A/53/40, para. 493). For further follow-up replies, dated 29 January and 14 April 1999, see A/54/40, paragraph 466.

Equatorial Guinea: Views in two cases with findings of violations:

414/1990 - *Primo Essono* and 468/1991 - *Oló Bahamonde* (A/49/40). Follow-up reply remains outstanding in both cases, in spite of consultations with the Permanent Mission of Equatorial Guinea to the United Nations during the fifty-sixth and fifty-ninth sessions (see A/51/40, paras. 442-444 and A/52/40, para. 539).

Finland: Views in five cases with findings of violations:

265/1987 - *Vuolanne* (A/44/40); for follow-up reply, see A/44/40, paragraph 657 and annex XII;

291/1988 - *Torres* (A/45/40); for follow-up reply, see A/45/40, volume II, annex XII, section C;

387/1989 - *Karttunen* (A/48/40); for follow-up reply, dated 20 April 1999, see A/54/40, paragraph 467;

412/1990 - *Kivenmaa* (A/49/40); preliminary follow-up reply, dated 13 September 1994, unpublished; for further follow-up reply, dated 20 April 1999, see A/54/40, paragraph 468;

779/1997 - *Äärelä et al.* (A/57/40); for follow-up reply, see A/57/40, paragraph 240; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that while he welcomed the State party's decision to provide compensation to the authors, the State party should make every effort to fully implement the Views and would wish to receive information on the outcome of the application for an extraordinary appeal.

France: Views in six cases with findings of violations:

196/1985 - *Gueye et al.* (A/44/40); for follow-up reply see A/51/40, paragraph 459;

549/1993 - *Hopu* (A/52/40); for follow-up reply see A/53/40, paragraph 495;

666/1995 - *Foin* (A/55/40); no follow-up reply required;

689/1996 - *Maille* (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the impugned law had been changed;

690/1996 and 691/1996 - *Venier* and *Nicolas* (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the impugned law had been changed.

Georgia: Views in four cases with findings of violations:

623/1995 - *Domukovsky*;

624/1995 - *Tsiklauri*;

626/1995 - *Gelbekhiani*;

627/1995 - *Dokvadze* (A/53/40); for follow-up replies, dated 19 August and 27 November 1998, see A/54/40, paragraph 469.

Guyana: Views in five cases with findings of violations:

676/1996 - *Yasseen and Thomas* (A/53/40); no follow-up reply received. In several letters, the last dated 23 August 1998, the authors' legal representative expresses concern that the Legal Affairs Minister of Guyana had recommended to his Government not to comply with the Committee's decision. In a letter dated 14 June 2000, the father of Yasseen informed the Committee that its recommendations had not been fulfilled. In a letter dated 6 November 2000, the same information is provided by the authors' legal representative;

728/1996 - *Sahadeo* (A/57/40); no follow-up reply received;

838/1998 - *Hendriks* (A/58/40); no follow-up reply received;

811/1998 - *Mulai* (annex IX); follow-up reply not yet due;

867/1999 - *Smartt* (annex IX); follow-up reply not yet due.

Hungary: Views in three cases with findings of violations:

410/1990 - *Párkányi* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

521/1992 - *Kulomin* (A/51/40); for follow-up reply, see A/52/40, paragraph 540;

852/1999 - *Borisenko* (A/58/40); for follow-up reply, see A/58/40, paragraph 239; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur noted the State party's challenge to its Views, but requested the State party to re-examine its position with a view to finding a possible remedy for the author.

Ireland: Views in one case with findings of violations:

819/1998 - *Kavanagh* (A/56/40); for follow-up reply, see A/57/40, paragraph 241, A/58/40, paragraph 240, and paragraph 241 below. The Special Rapporteur had consultations with a representative of the Permanent Mission of Ireland to the United Nations Office at Geneva during the seventy-ninth session. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur, while noting the author's dissatisfaction with the remedy offered by the State party, recommended that this case should no longer be considered under the follow-up procedure.

Italy: Views in one case with findings of violations:

699/1996 - *Maleki* (A/54/40); for follow-up reply, see A/55/40, paragraph 610.

Jamaica: Views in 97 cases with findings of violations:

Twenty-five detailed follow-up replies received, of which 19 indicate that the State party will not implement the Committee's recommendations, two promise to investigate and one announces the author's release (see A/54/40, para. 470); 36 general replies, indicating merely that the authors' death sentences had been commuted. No follow-up replies in 31 cases. Follow-up consultations with the State party's Permanent Representatives to the United Nations and to the United Nations Office at Geneva were conducted during the fifty-third, fifty-fifth, fifty-sixth and sixtieth sessions. Prior to the Committee's fifty-fourth session, the Special Rapporteur for the follow-up on Views conducted a follow-up fact-finding mission to Jamaica (see A/50/40, paras. 557-562). See further A/55/40, paragraph 611. Concerning the note verbale of 4 July 2001 regarding case No. 668/1995 (*Smith and Stewart v. Jamaica*), see A/56/40, paragraph 190. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that further information should be requested of the State party on the issue of compensation;

695/1996 - *Simpson* (A/57/40); follow-up reply received on 18 June 2003, see A/58/40, paragraph 241; for counsel's submission, see A/57/40, paragraph 241 and paragraph 242 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that updated information be requested of the State party, including information on the author's health;

792/1998 - *Higginson* (A/57/40); follow-up reply not yet received;

793/1998 - *Pryce* (annex IX); follow-up not yet due;

796/1998 - *Reece* (A/58/40); follow-up reply not yet received;

797/1998 - *Lobban* (annex IX); follow-up not yet due;

798/1998 - *Howell* (annex IX); follow-up reply not yet received.

Latvia: Views in one case with findings of violations:

884/1999 - *Ignatane* (A/56/40); for follow-up reply, see A/57/40, paragraph 243.

Lithuania: Views in two cases with findings of violations:

836/1998 - *Gelazauskas* (A/58/40); follow-up reply not yet received;

875/1999 - *Filipovich* (A/58/40); see paragraph 243 below for follow-up reply; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that neither of these cases should continue to be considered under the follow-up procedure as the State party had complied with the Committee's Views.

Libyan Arab Jamahiriya: Views in one case with findings of violations:

440/1990 - *El-Megreisi* (A/49/40); follow-up reply remains outstanding; the author has informed the Committee that his brother was released in March 1995; compensation remains outstanding.

Madagascar: Views in four cases with findings of violations:

49/1979 - *Marais*;

115/1982 - *Wight*;

132/1982 - *Jaona*;

155/1983 - *Hammel* (in *Selected Decisions*, vol. 2); follow-up replies remain outstanding in all four cases; the authors of the two first cases informed the Committee that they were released from detention;

Follow-up consultations with the Permanent Mission of Madagascar to the United Nations were held during the fifty-ninth session (A/52/40, para. 543).

Mauritius: Views in one case with findings of violations:

35/1978 - *Aumeeruddy-Cziffra et al.* (in *Selected Decisions*, vol. 1); for follow-up reply, see *Selected Decisions*, volume 2, annex I.

Namibia: Views in two cases with findings of violations:

760/1997 - *Diergaardt* (A/55/40); for follow-up reply, see A/57/40, paragraph 244;

919/2000 - *Muller and Engelhard* (A/57/40); for follow-up reply, see A/58/40, paragraph 242. In presenting its report to the Human Rights Committee during the eighty-first session, the State party reiterated the information previously provided on these two cases. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that neither of these cases should continue to be considered under the follow-up procedure as the State party had complied with the Committee's Views.

Netherlands: Views in seven cases with findings of violations:

172/1984 - *Broeks* (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - *Zwaan-de Vries* (A/42/40); follow-up reply, unpublished;

305/1988 - *van Alphen* (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - *Coeriel* (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - *Vos* (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - *Jansen-Gielen* (A/56/40); for follow-up reply, see A/57/40, paragraph 245. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered further under the follow-up procedure as the State party had complied with the Committee's Views;

976/2001 - *Derksen* (annex IX); follow-up not yet due.

New Zealand: Views in one case with findings of violations:

1090/2002 - *Rameka et al.* (annex IX); for follow-up reply see paragraph 245 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, neither the Special Rapporteur on new communications nor the Special Rapporteur on follow-up to Views considered the author's submission to pertain to follow-up, but was in fact a new communication and should be dealt with in the ordinary way. The Special Rapporteur recommended that, while noting the author's dissatisfaction with the remedy offered by the State party, this case should not be considered further under the follow-up procedure.

Nicaragua: Views in one case with findings of violations:

328/1988 - *Zelaya Blanco* (A/49/40); for follow-up reply, see A/56/40, paragraph 192 and A/57/40, paragraph 246. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that further information should be requested of the State party during consideration of its next report.

Norway: Views in one case with findings of violations:

631/1995 - *Spakmo* (A/55/40); for follow-up reply, see A/55/40, paragraph 613.

Panama: Views in two cases with findings of violations:

289/1988 - *Wolf* (A/47/40);

473/1991 - *Barroso* (A/50/40). For follow-up replies, dated 22 September 1997, see A/53/40, paragraphs 496 and 497.

Peru: Views in 10 cases with findings of violations:

202/1986 - *Ato del Avellanal* (A/44/40), see A/58/40, paragraph 243;

203/1986 - *Muñoz Hermosa* (A/44/40);

263/1987 - *González del Río* (A/48/40);

309/1988 - *Orihuela Valenzuela* (A/48/40); for follow-up reply in these four cases, see A/52/40, paragraph 546;

540/1993 - *Celis Laureano* (A/51/40); follow-up reply remains outstanding;

577/1994 - *Polay Campos* (A/53/40); for follow-up reply, see A/53/40, paragraph 498;

678/1996 - *Gutierrez Vivanco* (A/57/40); for follow-up reply, see A/58/40, paragraph 244;

688/1996 - *de Arguedas* (A/55/40); for follow-up reply see A/58/40, paragraph 245;

906/1999 - *Chira Vargas-Machuca* (A/57/40); for follow-up reply, see A/58/40, paragraph 244;

981/2001 - *Gomez Casafranca* (A/58/40); follow-up reply not yet received.

At the seventy-fourth and eightieth sessions the Special Rapporteur held consultations with representatives of the State party, who undertook to inform the capital and report to the Committee. No subsequent information has been received.

Philippines: Views in 5 cases with findings of violations:

788/1997 - *Cagas* (A/57/40); for follow-up reply see A/58/40, paragraph 246. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party. During follow-up consultations conducted during the eighty-first session, the State party representative confirmed that the State would send its response to the follow-up in this case;

868/1999 - *Wilson* (annex IX); follow-up reply not yet received;

869/1999 - *Piandiong et al.* (A/56/40); no follow-up replies received. The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines during the seventy-fourth session. No further information from the State party has been received;

1077/2002 - *Carpo et al.* (A/58/40); see paragraph 246 below for reply from author. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party and a meeting arranged with a State party representative. During follow-up consultations conducted during the eighty-first session, the State party representative confirmed that the State would send its response to the follow-up in this case;

1167/2003 - *Ramil Rayos* (annex IX); follow-up not yet due.

Republic of Korea:

Views in five cases with findings of violations:

518/1992 - *Sohn* (A/50/40); follow-up reply remains outstanding (see A/51/40, paras. 449 and 450; A/52/40, paras. 547 and 548);

574/1994 - *Kim* (A/54/40); no follow-up reply received;

628/1995 - *Park* (A/54/40); for follow-up reply, see A/54/40, paragraph 471;

878/1999 - *Kang* (A/58/40); for follow-up see paragraph 247 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the author be requested to comment on the State party's submission;

926/2000 - *Shin* (annex IX); follow-up not yet due.

Russian Federation:

Views in six cases with findings of violations:

770/1997 - *Gridin* (A/55/40); for follow-up reply, see A/57/40, paragraph 248 and paragraph 248 below for reply from author;

763/1997 - *Lantsova* (A/57/40); for follow-up reply, see A/58/40, paragraph 247;

888/1999 - *Telitsin* (annex IX); follow-up not yet due. By letter of 28 June 2004, the author affirmed that the communication had not been implemented and that she had not received any information from the State authorities;

712/1996 - *Smirnova* (annex IX); follow-up not yet due;

815/1997 - *Dugin* (annex IX); follow-up not yet due;

911/2000 - *Nazarov* (annex IX); follow-up not yet due.

Despite consultations held with the State party during the seventy-ninth session, the State party has not implemented the Views in either *Gridin* or *Lantsova*; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for follow-up replies be sent to the State party.

Saint Vincent and the Grenadines:

Views in one case with findings of violations:

806/1998 - *Thompson* (A/56/40); no follow-up reply received.

Senegal: Views in one case with findings of violations:

386/1989 - *Famara Koné* (A/50/40); for follow-up reply, see A/51/40, paragraph 461. See also summary record of the 1619th meeting, held on 21 October 1997 (CCPR/C/SR.1619).

Sierra Leone: Views in three cases with findings of violations:

839/1998 - *Mansaraj et al.* (A/56/40);

840/1998 - *Gborie et al.* (A/56/40);

841/1998 - *Sesay et al.* (A/56/40); for follow-up replies, see A/57/40, paragraph 249. In the follow-up report (CCPR/C/80/FU), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that while he welcomed the State party's decision to amend its legislation and the information provided that it has released the six living authors, the State party should reconsider its decision not to grant the families of the deceased victims compensation as requested by the Committee, so as to fully implement the Committee's Views.

Slovakia: Views in one case with findings of violations:

923/2000 - *Mátyus* (A/57/40); for follow-up reply, see A/58/40, paragraph 248. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case no longer be considered under the follow-up procedure.

Spain: Views in seven cases with findings of violations:

493/1992 - *Griffin* (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges the Committee's findings;

526/1993 - *Hill* (A/52/40); for follow-up reply, see A/53/40, paragraph 499, A/56/40, paragraph 196 and A/58/40, paragraph 249; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request for clarification on information provided by the authors that the State party had reformed its legal system be sent to the State party;

701/1996 - *Gómez Vásquez* (A/55/40); for follow-up reply, see A/56/40, paragraphs 197 and 198 and A/57/40, paragraph 250;

During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing; see also A/58/40, paragraph 250.

864/1999 - *Ruiz Agudo* (A/58/40); follow-up reply not yet received;

986/2001 - *Semey* (A/58/40); see paragraph 249 below for author's and State party's reply; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder be sent to the State party;

1006/2001 - *Muñoz* (annex IX); follow-up reply not yet received;

1007/2001 - *Sineiro Fernandez* (A/58/40); see paragraph 250 below for author's reply; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder be sent to the State party.

Sri Lanka: Views in four cases with findings of violations:

916/2000 - *Jayawardena* (A/57/40); for follow-up reply, see A/58/40, paragraph 251; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party;

950/2000 - *Sarma* (A/58/40); see paragraph 251 below for follow-up reply. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the author be requested to comment on the State party's submission and the State party requested to provide regular updates on the investigation, the criminal trial and any request for compensation from the author and his family;

909/2000 - *Kankanamge* (annex IX); follow-up not yet due;

1033/2001 - *Nallaratnam* (annex IX); follow-up not yet due.

Suriname: Views in eight cases with findings of violations:

146/1983 and 148-154/1983 - *Baboeram et al.* (in *Selected Decisions*, vol. 2); consultations held during the fifty-ninth session (see A/51/40, paragraph 451, and A/52/40, paragraph 549); for follow-up reply, see A/53/40, paragraphs 500-501. For follow-up consultations during the Committee's sixty-eighth session, see A/55/40, paragraph 614.

Tajikistan: Views in three cases with findings of violations:

964/2001 - *Saidov* (annex IX); follow-up not yet due;

	1096/2002 - *Kurbanov* (annex IX); for the follow-up reply from the author see paragraph 252 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the State party be requested to confirm the information provided by the author; 1117/2002 - *Khomidov* (annex IX); follow-up not yet due.
Togo:	Views in four cases with findings of violations: 422-424/1990 - *Aduayom et al.*; and 505/1992 - *Ackla* (A/51/40); for follow-up replies, see A/56/40, paragraph 199 and A/57/40, paragraph 251. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure with respect to these cases.
Trinidad and Tobago:	Views in 25 cases with findings of violations: Follow-up replies received in respect of *Pinto* (cases Nos. 232/1987 and 512/1992), *Shalto* (case No. 447/1991), *Neptune* (case No. 523/1992) and *Seerattan* (case No. 434/1990). For follow-up replies in respect of cases Nos. 362/1989 - *Soogrim* (A/48/40), 845/1998 - *Kennedy* (A/57/40) and 899/1999 - *Francis et al.* (A/57/40), as well as additional reply on *Neptune*, see A/58/40, paragraphs 252-254. Follow-up replies on the remainder of the cases are outstanding. Follow-up consultations were conducted during the sixty-first session (A/53/40, paras. 502-507); see also A/51/40, paragraphs 429, 452 and 453 and A/52/40, paragraphs 550-552; 938/2000 - *Girjadat Siewpers and et al.* (annex IX); follow-up not yet due.
Ukraine:	Views in two cases with findings of violations: 726/1996 - *Zheludkov* (A/58/40); for follow-up reply see A/58/40, paragraph 255. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure with respect to this case; 781/1997 - *Aliev* (A/58/40); follow-up not yet received.
Uruguay:	Views in 45 cases with findings of violations: 43 follow-up replies received, dated 17 October 1991, unpublished. Follow-up reply, dated 31 May 2000, concerning case No. 110/1981 (*Viana Acosta*), granting payment of US$ 120,000 to Mr. Viana. Follow-up replies on two Views remain outstanding: 159/1983 - *Cariboni* (in *Selected Decisions*, vol. 2) and 322/1988 - *Rodríguez* (A/49/40); see also A/51/40, paragraph 454.

Uzbekistan: Views in one case with findings of violations:

917/2000 - *Arutyunyan* (annex IX): follow-up reply not yet received.

Venezuela: Views in one case with findings of violations:

156/1983 - *Solórzano* (in *Selected Decisions*, vol. 2): follow-up reply, dated 21 October 1991, unpublished.

Zambia: Views in six cases with findings of violations:

314/1988 - *Bwalya* (A/48/40): follow-up reply: dated 3 April 1995, unpublished;

326/1988 - *Kalenga* (A/48/40): follow-up reply, dated 3 April 1995, unpublished;

390/1990 - *Lubuto* (A/51/40): follow-up replies remain outstanding;

768/1997 - *Mukunto* (A/54/40): follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, para. 200, A/57/40, para. 253). In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure as the State party had complied with its Views;

821/1998 - *Chongwe* (A/56/40): follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. By letter of 1 March 2001, the author indicated that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200 and A/57/40, paragraph 254. A South African NGO, acting on the author's behalf, confirmed this information on 16 June 2003. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure;

856/1999 - *Chambala* (A/58/40); follow-up reply not yet received.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their

investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

232. **Australia**: with regard to case No. 802/1998 - *Rogerson* (A/58/40): on 2 September 2002, the State party provided a response in which it considered that there are no measures required to be taken to give effect to the Committee's Views and affirmed its purpose to present the Committee's Views in Parliament and to forward them to the Government of the Northern Territory.

233. Case No. 941/2000 - *Young* (A/58/40): on 19 March 2004, the author's counsel stated that the State party had not implemented the Committee's Views. On 11 June 2004, the State party reiterated the arguments put forward in its response to the author's claims, maintaining that the sexual orientation of the author was not determinative of his entitlement to the pension under the Veteran's Entitlements Act 1986. It submitted that it does not accept the Committee's finding that Australia has violated article 26 and therefore rejects the conclusion that the author is entitled to an effective remedy.

234. Case No. 1020/2001 - *Cabal and Pasini* (A/58/40): on 17 February 2004, the State party stated that it had forwarded the Views to the State of Victoria and that the Victorian government had informed it that the authors had refused the option of being placed in separate cells and had requested to remain together. It advised that it is very unusual for two people to be placed in such a cell and the Victorian police have been asked to take any necessary steps to ensure that a similar situation does not arise again. The State party does not accept that the authors are entitled to compensation.

235. **Austria**: with regard to case No. 1086/2002, *Weiss* (A/58/40): on 6 August 2003, the State party informed the Committee of its efforts to publish the Committee's Views. On 9 August 2003, the State party provided extensive follow-up submissions. It referred to current proceedings before the Supreme Court, judgement expected in September 2003, on the exclusion of remedies with respect to the author. It argues, "further cases of this sort may in all likelihood be excluded". Legislative amendments to the extradition law resulting from the Views are under consideration. The United States Department of Justice was informed of the Views and asked to notify all procedural steps taken in the United States after the surrender. In addition, as the United States is a State party, there is "no indication", in its view, that the United States "will not meet [its] international obligations under the Covenant". On 7 May 2004, the State party supplemented its initial reply, in stating that on 9 September 2003, the Supreme Court granted Mr. Weiss restitution to the previous state in respect of his failure to observe a time limit for raising objections and dismissed the complaint of Mr. Weiss against the decision of the Vienna Court of Appeal of 8 May 2002, by which his extradition had been declared admissible. According to the 2004 Criminal Law Amendment Act, which entered into force on 1 May 2004, an investigating judge shall decide on the admissibility of the extradition, against which both the public prosecutor and the persons to be extradited may file an application to the court of second instance.

236. **Belarus**: with regard to case No. 814/1998 - *Pastukov* (A/58/40): on 25 January 2004, the author stated that the State party had not implemented the Committee's Views.

237. **Canada**: with regard to case No. 694/1996 - *Waldman* (A/56/40 and A/57/40): on 2 January 2004, the author reiterated that the Views had still not been implemented.

238. Case No. 829/1998 - *Judge* (A/58/40): on 17 November 2003, the State party informed the Committee that on 7 October 2003, pursuant to a request received by Amnesty International, federal government officials, representatives of Amnesty and the author's counsel met to hear Amnesty's views on how Canada should give effect to the Views. On 24 October 2003, the Canadian Consul General in Buffalo, New York, contacted the Governor of Pennsylvania and raised the *Judge* case with him. On 7 November 2003, the Government of Canada delivered a diplomatic note to the Government of the United States, which included a copy of the Views and requested the United States not to carry out the death penalty against Mr. Judge. It also requested that the request not to carry out the death penalty be transmitted to relevant state authorities expeditiously. The State party informed the Committee that since the Supreme Court of Canada's decision in *United States v. Burns and Rafay* in 2001, it had been in substantial compliance with the Committee's interpretation of article 6, paragraph 1, as stated in its Views. It stated that the Views had been posted on the Department of Canadian Heritage web site.

239. The State party is of the view that the Committee's interpretation of article 6, paragraph 1, goes beyond the language in Commission on Human Rights resolution 2003/67. It expressed concern over the Committee's statement that the rights in the Covenant should be interpreted by reference to the time of the Committee's examination, and not by reference to the time the alleged violation took place. It asserted that compliance with the Covenant should not be assessed against an interpretation of Covenant rights that had no currency at the time of the alleged violation and thus could not have been reasonably anticipated at the time of its actions. By letter of 1 December 2003, author's counsel expressed doubts about the effectiveness of the State party's attempts to have the author removed from death row. He has received no information either on the nature of the intervention made by the State party nor its outcome.

240. **Colombia**: as to case No. 778/1997 - *Coronel et al.* (A/58/40): on 14 April 2003, the State party informed the Committee that the Committee of Ministers decided to implement the Committee's Views and to pay the author's family damages. It intends to update the Committee on this matter.

241. Case No. 859/1999 - *Jiménez Vaca* (A/57/40): on 4 March 2004, the author replied that he had filed a constitutional action before the High Tribunal of the Judicial District of Bogotá and an appeal before the Supreme Court of Colombia, complaining about the State party's failure to comply with the Committee's Views. Both petitions were rejected. He submits that the domestic tribunals have accepted the State party's arguments that the Committee did not take into account the State party's submissions of 22 April 2002 and thus made a finding of violations unfairly.

242. **Czech Republic**: as to case No. 747/1997 - *Des Fours Walderode* (A/57/40 and A/58/40), by letter of 28 April 2003, the author informed the Committee that her case was returned for the third time by the Constitutional Court to the court of first instance, the Land Office of Semily. This Office again refused to grant her the restitution of her late

husband's property in the mistaken belief that her husband had been a collaborator during the war. On 24 November 2003, she informed the Secretariat that the State party had still not provided her with an effective remedy.

243. **Democratic Republic of the Congo**: as to case No. 933/2000 - *Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al.* (A/58/40), by letter of 10 October 2003, the State party informed the Committee that the Governmemnt had charged the Minister for Justice with the implementation of the resolution of the Inter-Congolese Dialogue concerning the case of the 315 dismissed civil and military judges. By e-mail of 9 December 2003, one of the authors informed the Committee that the presidential decree that was the subject of the Committee's Views and on the basis of which the authors had lost their jobs had been annulled on 25 November 2003. However, he also stated that the authors had not received any compensation. He did not say whether any of the authors had been reinstated in their posts.

244. **Ireland**: as to case No. 819/1998, *Kavanagh* (A/56/40 and A/58/40): on 11 February 2004, author's counsel informed the Secretariat that in January questions were asked about this case in the Dail Eireann (the lower House of the Irish Parliament) and written replies to the questions were provided by the Minister of Justice, Equality and Law Reform and the Minister for Foreign Affairs.

245. **Jamaica**: as to case No. 695/1996 - *Simpson* (A/57/40 and A/58/40): on 10 November 2003, author's counsel informed the Committee that the Court of Appeal had still not reviewed the author's non-parole period, leaving him still ineligible for parole. To counsel's knowledge, the State party had not taken steps towards finding a remedy for the author's medical problems.

246. **Lithuania**: as to case No. 836/1998 - *Gelazauskas* (A/58/40): on 25 July 2003, the State party informed the Committee that the author had been released 3 years, 2 months and 10 days prior to the completion of his sentence pursuant to the decision of the District Court of Kaisiadorys District. Also, since the reform of the court system and the adoption of the new Code of Criminal Procedure, which came into force on 1 May 2003, the State party guarantees to every person under its jurisdiction the requirement provided in article 14, paragraph 5, of the Covenant, that everyone convicted of a crime shall have the right "to his conviction and sentence being reviewed by a higher tribunal according to law".

247. Case No. 875/1999 - *Filipovich* (A/58/40): on 19 November 2003, the State party informed the Committee that, on 15 December 1998, the author had been released on parole 10 months and 19 days prior to the completion of his sentence. Subsequently, on 9 October 2003, an offer of compensation in the amount of 1,450 euros was made to the author by the State party. It informed the Committee of its intention to make the necessary amendments to the Law on Compensation, to allow for the provision of compensation for damage caused by unlawful acts of State authorities. It provided a copy of the new Code of Criminal Procedure, which provides for effective domestic remedies in future cases of unreasonably prolonged pre-trial investigations. By submission of 11 February 2004, the author confirmed that the State party had provided him with compensation of 1,450 euros. On 6 February 2004, the State party provided the same information.

248. **New Zealand**: as to case No. 1090/2002 - *Rameka* (annex IX): on 3 February 2004, the State party informed the Committee that section 25 (3) of the Parole Act 2000 provides that the Minister of Justice may designate a class of offenders who have not yet reached their parole eligibility dates for early consideration by the Parole Board, who would review the justification for a person's continued detention for preventive purposes. The Minister for Justice proposes to designate as a class of offenders for early consideration by the Parole Board, any offender who has been sentenced to preventive detention under the Criminal Justice Act if: (i) a court has indicated that, had preventive detention not been imposed, the finite sentence that would have instead been imposed on the offender would have been less than 10 years' imprisonment; and (ii) the offender has served a period of imprisonment of not less than the full term of the notional finite sentence; and (iii) the offender has applied for early parole consideration. This designation should ensure that Mr. Harris has the ability to challenge his continued detention at the time the notional finite sentence period mentioned in the Court of Appeal judgement has expired. In addition, the State party advises that the law on preventive detention has been amended. The Sentencing Act 2002 requires the court to make an order at the time a sentence of preventive detention is imposed as to the minimum period of detention, which must be for a period of not less than five years. The offender becomes eligible for regular review once the minimum period of detention has expired. On 12 March 2004, the authors responded to the State party's submission, stating that the remedy was ineffective, that the remedy itself was a new violation of article 15 and that the State party failed to publicize the Views. On 29 March 2004, the State party provided arguments in response to the author's submission of 12 March to the effect that the issues raised were new matters that were not raised in the initial communication.

249. **Philippines**: as to case No. 1077/2002 - *Carpo* (A/58/40): on 3 February 2004, author's counsel informed the Secretariat that on the basis of the Views a petition for a writ of habeas corpus had been heard before the Supreme Court but was denied. A motion for reconsideration was subsequently filed and is pending. The author sent a letter to the Office of the President seeking action pursuant to the Committee's Views but no response has been forthcoming.

250. **Republic of Korea**: as to case No. 878/1999 - *Kang* (A/58/40): on 14 October 2003, the State party informed the Committee that the author may submit an application for compensation to the State Compensation Deliberation Committee or file a lawsuit, in accordance with provisions of the State Compensation Act. The "law-abidance oath system" was abolished for fear that it infringed the freedom of conscience and expression as enshrined in the Constitution as well as the Covenant rights. Detainees are generally accommodated in cells on their own rather than in groups. Such "single confinement", according to the State party, is misinterpreted in the Views as "solitary confinement". Detainees in single cells are given the same treatment as those in group cells. It also confirmed that the Committee's Views had been published.

251. **Russian Federation**: as to case No. 770/1997 - *Gridin* (A/55/40): on 3 September 2003, the author informed the Committee that the State party had not given effect to the Views and requested the Committee to remind the State party of its obligation to do so.

252. **Spain**: as to case No. 986/2001 - *Semey* (A/58/40): on 16 November 2003, the author complained about the State party's failure to implement the Committee's Views. According to the author, although legislation has been proposed to institute an appeal remedy against

sentences delivered by the Audiencia Nacional, this would not constitute a proper remedy in his case. In his opinion, the appropriate remedy would be either the annulment of his sentence or his release from prison. On 5 March 2004, the State party forwarded its follow-up reply in which it stated that the legislative amendment is not retrospective and, consequently, persons already convicted and whose sentences have become final prior to the entry into force of the amendment will not benefit from it. In the State party's view, the Committee's Views cannot be deemed to oblige it to modify ex officio a final judgement. Otherwise, all persons who submit cases to the Committee in the future alleging a violation of article 14, paragraph 5, would have to have their sentences reviewed, a result that the State party finds unacceptable and contrary to the principle of *res judicata*. Accordingly, the State party submits that it is up to the author to seek the judicial avenues he may consider suitable to challenge his conviction.

253. Case No. 1007/2001 - *Sineiro Fernández* (A/58/40): on 23 September 2003, Counsel informed the Committee that the author requested the Audiencia Nacional to suspend his sentence. He also requested an effective remedy under article 2, paragraph 3 (a), of the Covenant before the Supreme Court and subsequently by appeal to the Constitutional Court. He also requested a pardon from the Ministry of Justice. Counsel also provides articles from the El País and El Mundo newspapers, which refer to the Committee's Views.

254. **Sri Lanka**: as regards case No. 950/2000 - *Sarma* (A/58/40): on 16 March 2004, the State party informed the Committee that it had conducted further investigations into the disappearance of the author's son, which included taking statements from the author and circulating notices in three newspapers urging anyone who may have information on his disappearance to come forward. No new information has been received to date and considering the lack of news, the State party is of the view that the author's son is probably dead. The Attorney-General has directed the State Counsel to expedite the trial of a Mr. Ratnamala Mudiyanselage Sarath Jayasinghe Perera, a former soldier, who is to be prosecuted in the High Court of Trincomalee. Apparently, there was a delay in the proceedings as, firstly, the accused did not appear in court and when he finally did appear he did so without a lawyer and the trial had to be adjourned. He has since been assigned State counsel and the trial judge will be apprised of the Views of the Committee and requested to expedite the trial. In the event that the person indicted for the disappearance is found guilty, there is provision for the court to award compensation to the victim's family. It is also possible for the family to claim compensation from the State.

255. **Tajikistan**: as to case No. 1096/2002 - *Kurbanov* (annex IX): on 9 February 2004 the Secretariat received information from the author's mother that the State party intended to execute her son despite the Committee's Views. On 12 February, a reminder was immediately sent to the State party to provide information on how it implemented, or intended to implement, the Committee's Views and reminded the State party of its obligations under article 2 of the Covenant. On 13 February, the Acting High Commissioner requested the State party not to execute the author, reiterated the State party's obligations under article 2 and requested information on the current situation of Mr. Kurbanov. On 10 March 2004, the Secretariat received information that the President of Tajikistan had agreed to grant Mr. Kurbanov a pardon.

Concern over the effectiveness of follow-up: positive developments

256. The Committee is deeply concerned about the increasing number of cases where States parties fail to implement the Committee's Views, or even to inform the Committee within the requested time frame of 90 days as to the measures taken. The Committee recalls that States parties to the Optional Protocol have an obligation to provide an effective remedy under article 2 of the Covenant.

257. The Committee again expresses its regret that its recommendation, formulated in its previous reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations High Commissioner for Human Rights, has still not been implemented.

Notes

[1] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. II, annex XI.

[2] Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

258. In chapter 7 of its last annual report,[1] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. This chapter provides an updated account, correct as of 18 June 2004, of the Committee's experience in this regard over the last year.

259. Over the period covered by the present annual report, Mr. Yalden has continued to act as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's seventy-ninth, eightieth and eighty-first sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions on a State-by-State basis.

260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action
Seventy-first session (March 2001)			
Croatia	6 April 2002	22 April 2003	At its seventy-ninth session, the Committee decided to take no further action.
Uzbekistan	6 April 2002	30 September 2002 (partial reply)	A complete response was requested to supplement the partial reply.
		6 January 2004 (additional information)	At its eightieth session, the Committee decided, in light of the fact that the State party's next report was due on 1 April 2004, to take no further action.

State party	Date information due	Date reply received	Further action
Seventy-first session (March 2001) (cont'd)			
Venezuela	6 April 2002	19 September 2002 (partial reply)	A complete response was requested to supplement the partial reply.
		7 May 2003 (further partial reply)	A complete response was requested to supplement the further partial reply.
Seventy-second session (July 2001)			
Czech Republic	25 July 2002	9 December 2002 (partial reply)	A complete response was requested to supplement the partial reply.
		24 July 2003 (further reply)	At its seventy-ninth session, the Committee decided to take no further action.
Guatemala	25 July 2002	23 July 2003 (partial reply); 24 July 2003 (further reply)	At its seventy-ninth session, the Committee decided to take no further action.
Netherlands	25 July 2002	9 April 2003 (interim reply)	At its seventy-eighth session, the Committee noted the State party's interim reply.
		17 August 2004 (second interim reply)	Two subsequent reminders have been dispatched to the State party with respect to its outstanding response on the issue of euthanasia.

State party	Date information due	Date reply received	Further action
Seventy-third session (October 2001) (no outstanding State party replies)			
Seventy-fourth session (March 2002)			
Sweden	3 April 2003	6 May 2003	At its seventy-eighth session, the Committee requested its Special Rapporteur to clarify certain issues with respect to paragraph XX of the Committee's concluding observations with the State party arising from its response.
		1 December 2003 (further reply consequent to consultations)	At its seventy-ninth session, the Special Rapporteur met with a delegation of the State party to discuss these issues. The Committee decided to fix the date for the next report as provisionally decided.
		18 June 2004 (further reply submitted at request of the Special Rapporteur)	At its eightieth session, the Committee considered the further reply and requested the Special Rapporteur to maintain contact with the State party on the issue in question.
		25 June 2004 (further reply provided)	Clarification of certain points was requested by the Special Rapporteur. The Special Rapporteur will keep the matter under review.

State party	Date information due	Date reply received	Further action
Seventy-fifth session (July 2002)			
Republic of Moldova	25 July 2003	-	After two reminders had failed to elicit a response, the Special Rapporteur met with a representative of the State party's delegation in New York at the Committee's eightieth session. The delegation undertook to submit the next periodic report as scheduled by 1 August 2004, and stated that follow-up information would be sent to the Committee in the event that it became available earlier.
Yemen	25 July 2003	Fourth periodic report received 21 July 2004	After two reminders failed to elicit a response, the Special Rapporteur held consultations with the State party during the Committee's eighty-first session.
Seventy-sixth session (October 2002)			
Egypt	4 November 2003	26 September 2003 (partial reply)	A complete response was requested to supplement the partial reply.
Togo	4 November 2003	5 March 2003 (partial reply)	A complete response was requested to supplement the partial reply.
Seventy-seventh session (March 2003)			
Estonia	3 April 2004	16 April 2004	Next report due by 1 April 2007
Luxembourg	3 April 2004	25 May 2004	Next report due by 1 April 2008.
Mali	3 April 2004	-	A reminder has been dispatched.

State party	Date information due	Date reply received	Further action
Seventy-eighth session (October 2003)			
El Salvador	7 August 2004	-	-
Israel	7 August 2004	-	-
Portugal	7 August 2004	-	-
Slovakia	7 August 2004	6 November 2003 (partial reply)	A complete response was requested to supplement the partial reply.
Seventy-ninth session (October 2003)			
Latvia	7 November 2004	-	-
Philippines	7 November 2004	-	-
Sri Lanka	7 November 2004	-	-
Russian Federation	7 November 2004	-	-
Eightieth session (March 2004)			
Colombia	1 April 2004	-	-
Germany	1 April 2004	-	-
Lithuania	1 April 2004	-	-
Suriname	1 April 2004	-	-
Uganda	1 April 2004	25 May 2004 (partial reply)	A complete response was requested to supplement the partial reply.

Note

[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

Annex I

STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 31 JULY 2004

A. States parties to the International Covenant on Civil and Political Rights (153)

State party	Date of receipt of the instrument of ratification	Date of entry into force
Afghanistan	24 January 1983[a]	24 April 1983
Albania	4 October 1991[a]	4 January 1992
Algeria	12 September 1989	12 December 1989
Angola	10 January 1992[a]	10 April 1992
Argentina	8 August 1986	8 November 1986
Armenia	23 June 1993[a]	[b]
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Azerbaijan	13 August 1992[a]	[b]
Bangladesh	7 September 2000	7 December 2000
Barbados	5 January 1973[a]	23 March 1976
Belarus	12 November 1973	23 March 1976
Belgium	21 April 1983	21 July 1983
Belize	10 June 1996[a]	10 September 1996
Benin	12 March 1992[a]	12 June 1992
Bolivia	12 August 1982[a]	12 November 1982
Bosnia and Herzegovina	1 September 1993[c]	6 March 1992
Botswana	8 September 2000	8 December 2000
Brazil	24 January 1992[a]	24 April 1992
Bulgaria	21 September 1970	23 March 1976
Burkina Faso	4 January 1999[a]	4 April 1999
Burundi	9 May 1990[a]	9 August 1990
Cambodia	26 May 1992[a]	26 August 1992
Cameroon	27 June 1984[a]	27 September 1984
Canada	19 May 1976[a]	19 August 1976
Cape Verde	6 August 1993[a]	6 November 1993
Central African Republic	8 May 1981[a]	8 August 1981
Chad	9 June 1995[a]	9 September 1995
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976

State party	Date of receipt of the instrument of ratification	Date of entry into force
Congo	5 October 1983[a]	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	26 March 1992[a]	26 June 1992
Croatia	12 October 1992[c]	8 October 1991
Cyprus	2 April 1969	23 March 1976
Czech Republic	22 February 1993[c]	1 January 1993
Democratic People's Republic of Korea	14 September 1981[a]	14 December 1981
Democratic Republic of the Congo	1 November 1976[a]	1 February 1977
Denmark	6 January 1972	23 March 1976
Djibouti	5 November 2002[a]	5 February 2003
Dominica	17 June 1993[a]	17 September 1993
Dominican Republic	4 January 1978[a]	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987[a]	25 December 1987
Eritrea	22 January 2002[a]	22 April 2002
Estonia	21 October 1991[a]	21 January 1992
Ethiopia	11 June 1993[a]	11 September 1993
Finland	19 August 1975	23 March 1976
France	4 November 1980[a]	4 February 1981
Gabon	21 January 1983[a]	21 April 1983
Gambia	22 March 1979[a]	22 June 1979
Georgia	3 May 1994[a]	[b]
Germany	17 December 1973	23 March 1976
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997[a]	5 August 1997
Grenada	6 September 1991[a]	6 December 1991
Guatemala	6 May 1992[a]	6 August 1992
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991[a]	6 May 1991
Honduras	25 August 1997	25 November 1997
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979

State party	Date of receipt of the instrument of ratification	Date of entry into force
India	10 April 1979[a]	10 July 1979
Iran, Islamic Republic of	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990
Israel	3 October 1991[a]	3 January 1992
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kazakhstan[d]		
Kenya	1 May 1972[a]	23 March 1976
Kuwait	21 May 1996[a]	21 August 1996
Kyrgyzstan	7 October 1994[a]	[b]
Latvia	14 April 1992[a]	14 July 1992
Lebanon	3 November 1972[a]	23 March 1976
Lesotho	9 September 1992[a]	9 December 1992
Libyan Arab Jamahiriya	15 May 1970[a]	23 March 1976
Liechtenstein	10 December 1998[a]	10 March 1999
Lithuania	20 November 1991[a]	20 February 1992
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	22 December 1993[a]	22 March 1994
Mali	16 July 1974[a]	23 March 1976
Malta	13 September 1990[a]	13 December 1990
Mauritius	12 December 1973[a]	23 March 1976
Mexico	23 March 1981[a]	23 June 1981
Monaco	28 August 1997	28 November 1997
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Mozambique	21 July 1993[a]	21 October 1993
Namibia	28 November 1994[a]	28 February 1995
Nepal	14 May 1991	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980[a]	12 June 1980

State party	Date of receipt of the instrument of ratification	Date of entry into force
Niger	7 March 1986[a]	7 June 1986
Nigeria	29 July 1993[a]	29 October 1993
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 June 1992[a]	10 September 1992
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990[a]	10 July 1990
Republic of Moldova	26 January 1993[a]	[b]
Romania	9 December 1974	23 March 1976
Russian Federation	16 October 1973	23 March 1976
Rwanda	16 April 1975[a]	23 March 1976
Saint Vincent and the Grenadines	9 November 1981[a]	9 February 1982
San Marino	18 October 1985[a]	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia and Montenegro[e]	12 March 2001	[d]
Seychelles	5 May 1992[a]	5 August 1992
Sierra Leone	23 August 1996[a]	23 November 1996
Slovakia	28 May 1993[c]	1 January 1993
Slovenia	6 July 1992[c]	25 June 1991
Somalia	24 January 1990[a]	24 April 1990
South Africa	10 December 1998[a]	10 March 1999
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980[a]	11 September 1980
Sudan	18 March 1986[a]	18 June 1986
Suriname	28 December 1976[a]	28 March 1977
Swaziland	26 March 2004[a]	26 June 2004
Sweden	6 December 1971	23 March 1976
Switzerland	18 June 1992[a]	18 September 1992
Syrian Arab Republic	21 April 1969[a]	23 March 1976
Tajikistan	4 January 1999[a]	[b]
Thailand	29 October 1996[a]	29 January 1997
The former Yugoslav Republic of Macedonia	18 January 1994[c]	17 September 1991

State party	Date of receipt of the instrument of ratification	Date of entry into force
Timor-Leste	18 September 2003[a]	18 December 2003
Togo	24 May 1984[a]	24 August 1984
Trinidad and Tobago	21 December 1978[a]	21 March 1979
Tunisia	18 March 1969	23 March 1976
Turkey	15 September 2003	15 December 2003
Turkmenistan	1 May 1997[a]	[b]
Uganda	21 June 1995[a]	21 September 1995
Ukraine	12 November 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976[a]	11 September 1976
United States of America	8 June 1992	8 September 1992
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995	[b]
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982[a]	24 December 1982
Yemen	9 February 1987[a]	9 May 1987
Zambia	10 April 1984[a]	10 July 1984
Zimbabwe	13 May 1991[a]	13 August 1991

Note: In addition to the States parties listed above, the Covenant continues to apply in the Hong Kong Special Administrative Region of China and the Macau Special Administrative Region of China.[f]

B. States parties to the Optional Protocol (104)

State party	Date of receipt of the instrument of ratification	Date of entry into force
Algeria	12 September 1989[a]	12 December 1989
Angola	10 January 1992[a]	10 April 1992
Argentina	8 August 1986[a]	8 November 1986
Armenia	23 June 1993[a]	23 September 1993
Australia	25 September 1991[a]	25 December 1991
Austria	10 December 1987	10 March 1988
Azerbaijan	27 November 2001	27 February 2002
Barbados	5 January 1973[a]	23 March 1976
Belarus	30 September 1992[a]	30 December 1992
Belgium	17 May 1994[a]	17 August 1994

State party	Date of receipt of the instrument of ratification	Date of entry into force
Benin	12 March 1992[a]	12 June 1992
Bolivia	12 August 1982[a]	12 November 1982
Bosnia and Herzegovina	1 March 1995	1 June 1995
Bulgaria	26 March 1992[a]	26 June 1992
Burkina Faso	4 January 1999[a]	4 April 1999
Cameroon	27 June 1984[a]	27 September 1984
Canada	19 May 1976[a]	19 August 1976
Cape Verde	19 May 2000[a]	19 August 2000
Central African Republic	8 May 1981[a]	8 August 1981
Chad	9 June 1995	9 September 1995
Chile	28 May 1992[a]	28 August 1992
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983[a]	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	5 March 1997	5 June 1997
Croatia	12 October 1995[a]	
Cyprus	15 April 1992	15 July 1992
Czech Republic	22 February 1993[c]	1 January 1993
Democratic Republic of the Congo	1 November 1976[a]	1 February 1977
Denmark	6 January 1972	23 March 1976
Djibouti	5 November 2002[a]	5 February 2003
Dominican Republic	4 January 1978[a]	4 April 1978
Ecuador	6 March 1969	23 March 1976
El Salvador	6 June 1995	6 September 1995
Equatorial Guinea	25 September 1987[a]	25 December 1987
Estonia	21 October 1991[a]	21 January 1992
Finland	19 August 1975	23 March 1976
France	17 February 1984[a]	17 May 1984
Gambia	9 June 1988[a]	9 September 1988
Georgia	3 May 1994[a]	3 August 1994
Germany	25 August 1993	25 November 1993
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997[a]	5 August 1997
Guatemala	28 November 2000	28 February 2001
Guinea	17 June 1993	17 September 1993

State party	Date of receipt of the instrument of ratification	Date of entry into force
Guyana[g]	10 May 1993[a]	10 August 1993
Hungary	7 September 1988[a]	7 December 1988
Iceland	22 August 1979[a]	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978
Kyrgyzstan	7 October 1995[a]	7 January 1996
Latvia	22 June 1994[a]	22 September 1994
Lesotho	7 September 2000	7 December 2000
Libyan Arab Jamahiriya	16 May 1989[a]	16 August 1989
Liechtenstein	10 December 1998[a]	10 March 1999
Lithuania	20 November 1991[a]	20 February 1992
Luxembourg	18 August 1983[a]	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	11 June 1996	11 September 1996
Mali	24 October 2001	24 January 2002
Malta	13 September 1990[a]	13 December 1990
Mauritius	12 December 1973[a]	23 March 1976
Mexico	15 March 2002	15 June 2002
Mongolia	16 April 1991[a]	16 July 1991
Namibia	28 November 1994[a]	28 February 1995
Nepal	14 May 1991[a]	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989[a]	26 August 1989
Nicaragua	12 March 1980[a]	12 June 1980
Niger	7 March 1986[a]	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 January 1995[a]	10 April 1995
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989[a]	22 November 1989
Poland	7 November 1991[a]	7 February 1992
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990[a]	10 July 1990
Romania	20 July 1993[a]	20 October 1993
Russian Federation	1 October 1991[a]	1 January 1992

State party	Date of receipt of the instrument of ratification	Date of entry into force
Saint Vincent and the Grenadines	9 November 1981[a]	9 February 1982
San Marino	18 October 1985[a]	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia and Montenegro[e]	6 September 2001	6 December 2001
Seychelles	5 May 1992[a]	5 August 1992
Sierra Leone	23 August 1996[a]	23 November 1996
Slovakia	28 May 1993[c]	1 January 1993
Slovenia	16 July 1993[a]	16 October 1993
Somalia	24 January 1990[a]	24 April 1990
South Africa	28 August 2002	28 November 2002
Spain	25 January 1985[a]	25 April 1985
Sri Lanka[a]	3 October 1997	3 January 1998
Suriname	28 December 1976[a]	28 March 1977
Sweden	6 December 1971	23 March 1976
Tajikistan	4 January 1999[a]	4 April 1999
The former Yugoslav Republic of Macedonia	12 December 1994[a]	12 March 1995
Togo	30 March 1988[a]	30 June 1988
Turkmenistan[b]	1 May 1997[a]	1 August 1997
Uganda	14 November 1995	14 February 1996
Ukraine	25 July 1991[a]	25 October 1991
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995	28 December 1995
Venezuela	10 May 1978	10 August 1978
Zambia	10 April 1984[a]	10 July 1984

Note: Jamaica denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998. Trinidad and Tobago denounced the Optional Protocol on 26 May 1998 and re-acceded on the same day, subject to a reservation, with effect from 26 August 1998. Following the Committee's decision in case No. 845/1999 (*Kennedy v. Trinidad and Tobago*) of 2 November 1999, declaring the reservation invalid, Trinidad and Tobago again denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000.

C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty (53)

State party	Date of receipt of the instrument of ratification	Date of entry into force
Australia	2 October 1990[a]	11 July 1991
Austria	2 March 1993	2 June 1993
Azerbaijan	22 January 1999[a]	22 April 1999
Belgium	8 December 1998	8 March 1999
Bosnia and Herzegovina	16 March 2001	16 June 2001
Bulgaria	10 August 1999	10 November 1999
Cape Verde	19 May 2000[a]	19 August 2000
Colombia	5 August 1997	5 November 1997
Costa Rica	5 June 1998	5 September 1998
Croatia	12 October 1995[a]	12 January 1996
Czech Republic	15 June 2004	15 September 2004
Cyprus	10 September 1999	10 December 1999
Denmark	24 February 1994	24 May 1994
Djibouti	5 November 2002[a]	5 February 2003
Ecuador	23 February 1993[a]	23 May 1993
Estonia	30 January 2004	30 April 2004
Finland	4 April 1991	11 July 1991
Georgia	22 March 1999[a]	22 June 1999
Germany	18 August 1992	18 November 1992
Greece	5 May 1997[a]	5 August 1997
Hungary	24 February 1994[a]	24 May 1994
Iceland	2 April 1991	11 July 1991
Ireland	18 June 1993[a]	18 September 1993
Italy	14 February 1995	14 May 1995
Liechtenstein	10 December 1998	10 March 1999
Lithuania	27 March 2002	26 June 2002
Luxembourg	12 February 1992	12 May 1992
Malta	29 December 1994	29 March 1995
Monaco	28 March 2000[a]	28 June 2000
Mozambique	21 July 1993[a]	21 October 1993
Namibia	28 November 1994[a]	28 February 1995
Nepal	4 March 1998	4 June 1998
Netherlands	26 March 1991	11 July 1991
New Zealand	22 February 1990	11 July 1991
Norway	5 September 1991	5 December 1991

State party	Date of receipt of the instrument of ratification	Date of entry into force
Panama	21 January 1993[a]	21 April 1993
Paraguay	18 August 2003	18 November 2003
Portugal	17 October 1990	11 July 1991
Romania	27 February 1991	11 July 1991
Serbia and Montenegro[c]	6 September 2001[a]	6 December 2001
Seychelles	15 December 1994[a]	15 March 1995
Slovakia	22 June 1999[a]	22 September 1999
Slovenia	10 March 1994	10 June 1994
South Africa	28 August 2002[a]	28 November 2002
Spain	11 April 1991	11 July 1991
Sweden	11 May 1990	11 July 1991
Switzerland	16 June 1994[a]	16 September 1994
The former Yugoslav Republic of Macedonia	26 January 1995[a]	26 April 1995
Timor-Leste	18 September 2003	18 December 2003
Turkmenistan	11 January 2000[a]	11 April 2000
United Kingdom of Great Britain and Northern Ireland	10 December 1999	10 March 2000
Uruguay	21 January 1993	21 April 1993
Venezuela	22 February 1993	22 May 1993

D. States which have made the declaration under article 41 of the Covenant (48)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Australia	28 January 1993	Indefinitely
Austria	10 September 1978	Indefinitely
Belarus	30 September 1992	Indefinitely
Belgium	5 March 1987	Indefinitely
Bosnia and Herzegovina	6 March 1992	Indefinitely
Bulgaria	12 May 1993	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely

State party	Valid from	Valid until
Congo	7 July 1989	Indefinitely
Croatia	12 October 1995	Indefinitely
Czech Republic	1 January 1993	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Ghana	7 September 2000	Indefinitely
Germany	28 March 1976	10 May 2006
Guyana	10 May 1993	Indefinitely
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Liechtenstein	10 March 1999	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Russian Federation	1 October 1991	Indefinitely
Senegal	5 January 1981	Indefinitely
Slovakia	1 January 1993	Indefinitely
Slovenia	6 July 1992	Indefinitely
South Africa	10 March 1999	Indefinitely
Spain	30 January 1998	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
Switzerland	18 September 1992	18 September 2002
Tunisia	24 June 1993	Indefinitely
Ukraine	28 July 1992	Indefinitely

State party	Valid from	Valid until
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely
United States of America	8 September 1992	Indefinitely
Zimbabwe	20 August 1991	Indefinitely

Notes

[a] Accession.

[b] In the opinion of the Committee, the entry into force goes back to the date when the State became independent.

[c] Succession.

[d] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. I, paras. 48 and 49).

[e] The Socialist Federal Republic of Yugoslavia ratified the Covenant on 2 June 1971, which entered into force for that State on 23 March 1976. The successor State (Federal Republic of Yugoslavia) was admitted to the United Nations by General Assembly resolution 55/12 of 1 November 2000. According to a subsequent declaration, the Federal Republic of Yugoslavia acceded to the Covenant with effect from 12 March 2001. It is the established practice of the Committee that the people within the territory of a State which constituted part of a former State party to the Covenant continue to be entitled to the guarantees recognized in the Covenant. Following the adoption of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to "Serbia and Montenegro".

[f] For information on the application of the Covenant in the Hong Kong Special Administrative Region of China, see *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40* (A/51/40), chap. V, sect. B, paras. 78-85. For information on the application of the Covenant in Macau Special Administrative Region, see ibid., *Fifty-fifth Session, Supplement No. 40* (A/55/40), chap. IV.

[g] Guyana denounced the Optional Protocol on 5 January 1999 and re-acceded on the same day, subject to reservations, with effect from 5 April 1999. Guyana's reservation elicited objections from six States parties to the Optional Protocol.

Annex II

MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 2003-2004

A. Membership of the Human Rights Committee

Seventy-ninth, eightieth and eighty-first sessions

Mr. Abdelfattah AMOR**	Tunisia
Mr. Nisuke ANDO**	Japan
Mr. Prafullachandra Natwarlal BHAGWATI**	India
Mr. Alfredo CASTILLERO HOYOS**	Panama
Ms. Christine CHANET**	France
Mr. Franco DEPASQUALE*	Malta
Mr. Maurice GLÈLÈ-AHANHANZO*	Benin
Mr. Walter KÄLIN**	Switzerland
Mr. Ahmed Tawfik KHALIL*	Egypt
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Rafael RIVAS POSADA*	Colombia
Sir Nigel RODLEY*	United Kingdom of Great Britain and Northern Ireland
Mr. Martin SCHEININ*	Finland
Mr. Ivan SHEARER*	Australia
Mr. Hipólito SOLARI YRIGOYEN**	Argentina
Ms. Ruth WEDGWOOD**	United States of America
Mr. Roman WIERUSZEWSKI**	Poland
Mr. Maxwell YALDEN*	Canada

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* Term expires on 31 December 2004.

** Term expires on 31 December 2006.

B. Officers

Seventy-ninth, eightieth and eighty-first sessions

The officers of the Committee, elected for a term of two years at the 2070th meeting, on 17 March 2003 (seventy-seventh session), are the following:

Chairperson:	Mr. Abdelfattah Amor
Vice-Chairpersons:	Mr. Rafael Rivas Posada Sir Nigel Rodley Mr. Roman Wieruszewski
Rapporteur:	Mr. Ivan Shearer

Annex III

GENERAL COMMENT ADOPTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

GENERAL COMMENT NO. 31 (80) ON ARTICLE 2 OF THE COVENANT

The nature of the general legal obligation imposed on States parties to the Covenant

(adopted at the 2187th meeting on 29 March 2004)

1. This general comment replaces general comment No. 3, reflecting and developing its principles. The general non-discrimination provisions of article 2, paragraph 1, have been addressed in general comment No. 18 and general comment No. 28, and this general comment should be read together with them.

2. While article 2 is couched in terms of the obligations of States parties towards individuals as the right-holders under the Covenant, every State party has a legal interest in the performance by every other State party of its obligations. This follows from the fact that the "rules concerning the basic rights of the human person" are *erga omnes* obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State party to a treaty being obligated to every other State party to comply with its undertakings under the treaty. In this connection, the Committee reminds States parties of the desirability of making the declaration contemplated in article 41. It further reminds those States parties already having made the declaration of the potential value of availing themselves of the procedure under that article. However, the mere fact that a formal inter-State mechanism for complaints to the Human Rights Committee exists in respect of States parties that have made the declaration under article 41 does not mean that this procedure is the only method by which States parties can assert their interest in the performance of other States parties. On the contrary, the article 41 procedure should be seen as supplementary to, not diminishing of, States parties' interest in each other's discharge of their obligations. Accordingly, the Committee commends to States parties the view that violations of Covenant rights by any State party deserve their attention. To draw attention to possible breaches of Covenant obligations by other States parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.

3. Article 2 defines the scope of the legal obligations undertaken by States parties to the Covenant. A general obligation is imposed on States parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see paragraph 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States parties are required to give effect to the obligations under the Covenant in good faith.

4. The obligations of the Covenant in general and of article 2 in particular are binding on every State party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State party. The executive branch, which usually represents the State party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Although article 2, paragraph 2, allows States parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States parties with a federal structure of the terms of article 50, according to which the Covenant's provisions "shall extend to all parts of federal States without any limitations or exceptions".

5. The article 2, paragraph 1, obligation to respect and ensure the rights recognized by the Covenant has immediate effect for all States parties. Article 2, paragraph 2, provides the overarching framework within which the rights specified in the Covenant are to be promoted and protected. The Committee has as a consequence previously indicated in its general comment No. 24 that reservations to article 2 would be incompatible with the Covenant when considered in the light of its objects and purposes.

6. The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

7. Article 2 requires that States parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations. The Committee believes that it is important to raise levels of awareness about the Covenant not only among public officials and State agents but also among the population at large.

8. The article 2, paragraph 1, obligations are binding on States parties and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between

the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.

9. The beneficiaries of the rights recognized by the Covenant are individuals. Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as the freedom to manifest one's religion or belief (art. 18), the freedom of association (art. 22) or the rights of members of minorities (art. 27), may be enjoyed in community with others. The fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the Optional Protocol) does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.

10. States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in general comment No. 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

11. As implied in general comment No. 29,[a] the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

12. Moreover, the article 2 obligation requiring that States parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.

13. Article 2, paragraph 2, requires that States parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article 2 allows a State party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order. The Committee invites those States parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law to facilitate full realization of Covenant rights as required by article 2.

14. The requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.

15. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including, in particular, children. The Committee attaches importance to States parties establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

16. Article 2, paragraph 3, requires that States parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

17. In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State party's laws or practices.

18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (art. 7), summary and arbitrary killing (art. 6) and enforced disappearance (arts. 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern to the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, article 7). Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see general comment No. 20 (44)) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.

19. The Committee further takes the view that the right to an effective remedy may in certain circumstances require States parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.

20. Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place. This is presumably attributable to the failure of the remedies to function effectively in practice. Accordingly, States parties are requested to provide information on the obstacles to the effectiveness of existing remedies in their periodic reports.

Note

[a] General comment No. 29 (72), on derogations from provisions of the Covenant during a state of emergency, adopted on 24 July 2001, reproduced in *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), annex VI.

Annex IV

SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (STATUS AS OF 31 JULY 2004)

State party	Type of report	Date due	Date of submission
Afghanistan	Second periodic	23 April 1989	25 October 1991[a]
Albania	Initial/Special	3 January 1993	2 February 2004
Algeria	Third periodic	1 June 2000	Not yet received
Angola	Initial	31 December 1997	Not yet received
Argentina	Fourth periodic	31 October 2005	Not yet due
Armenia	Second periodic	1 October 2001	Not yet received
Australia	Fifth periodic	31 July 2005	Not yet due
Austria	Fourth periodic	1 October 2002	Not yet received
Azerbaijan	Third periodic	1 November 2005	Not yet due
Bangladesh	Initial	6 December 2001	Not yet received
Barbados	Third periodic	11 April 1991	Not yet received
Belarus	Fifth periodic	7 November 2001	Not yet received
Belgium	Fifth periodic	1 August 2008	Not yet due
Belize	Initial	9 September 1997	Not yet received
Benin	Initial	11 June 1993	1 February 2004
Bolivia	Third periodic	31 December 1999	Not yet received
Bosnia and Herzegovina	Initial	5 March 1993	Not yet received
Botswana	Initial	8 December 2001	Not yet received
Brazil	Second periodic	23 April 1998	Not yet received
Bulgaria	Third periodic	31 December 1994	Not yet received
Burkina Faso	Initial	3 April 2000	Not yet received
Burundi	Second periodic	8 August 1996	Not yet received
Cambodia	Second periodic	31 July 2002	Not yet received
Cameroon	Fourth periodic	31 October 2003	Not yet received
Canada	Fifth periodic	30 April 2004	Not yet received
Cape Verde	Initial	5 November 1994	Not yet received
Central African Republic	Second periodic	9 April 1989	Not yet received[b]
Chad	Initial	8 September 1996	Not yet received
Chile	Fifth periodic	28 April 2002	Not yet received
Colombia	Sixth periodic	1 April 2008	Not yet due

State party	Type of report	Date due	Date of submission
Congo	Third periodic	31 March 2003	Not yet received
Costa Rica	Fifth periodic	30 April 2004	Not yet received
Côte d'Ivoire	Initial	25 June 1993	Not yet received
Croatia	Second periodic	1 April 2005	Not yet due
Cyprus	Fourth periodic	1 June 2002	Not yet received
Czech Republic	Second periodic	1 August 2005	Not yet due
Democratic People's Republic of Korea	Third periodic	1 January 2004	Not yet received
Democratic Republic of the Congo	Third periodic	31 July 1991	Not yet received
Denmark	Fifth periodic	31 October 2005	Not yet due
Djibouti	Initial	5 February 2004	Not yet received
Dominica	Initial	16 September 1994	Not yet received
Dominican Republic	Fifth periodic	1 April 2005	Not yet due
Ecuador	Fifth periodic	1 June 2001	Not yet received
Egypt	Fourth periodic	1 November 2004	Not yet due
El Salvador	Fourth periodic	1 August 2007	Not yet due
Equatorial Guinea	Initial	24 December 1988	Not yet received[b]
Eritrea	Initial	22 April 2003	Not yet received
Estonia	Third periodic	1 April 2007	Not yet due
Ethiopia	Initial	10 September 1994	Not yet received
Finland	Fifth periodic	1 June 2003	17 June 2003
France	Fourth periodic	31 December 2000	Not yet received
Gabon	Third periodic	31 October 2003	Not yet received
Gambia	Second periodic	21 June 1985	Not yet received[b]
Georgia	Third periodic	1 April 2006	Not yet due
Germany	Sixth periodic	1 April 2009	Not yet due
Ghana	Initial	8 February 2001	Not yet received
Greece	Initial	4 August 1998	5 April 2004
Grenada	Initial	5 December 1992	Not yet received
Guatemala	Third periodic	1 August 2005	Not yet due
Guinea	Third periodic	30 September 1994	Not yet received
Guyana	Third periodic	31 March 2003	Not yet received
Haiti	Initial	30 December 1996	Not yet received
Honduras	Initial	24 November 1998	Not yet received
Hong Kong Special Administrative Region (China)[c]	Second periodic (China)	31 October 2003	Not yet received
Hungary	Fifth periodic	1 April 2007	Not yet due

State party	Type of report	Date due	Date of submission
Iceland	Fourth periodic	30 October 2003	15 June 2004
India	Fourth periodic	31 December 2001	Not yet received
Iran (Islamic Republic of)	Third periodic	31 December 1994	Not yet received
Iraq	Fifth periodic	4 April 2000	Not yet received
Ireland	Third periodic	31 July 2005	Not yet due
Israel	Third periodic	1 August 2007	Not yet due
Italy	Fifth periodic	1 June 2002	19 March 2004
Jamaica	Third periodic	7 November 2001	Not yet received
Japan	Fifth periodic	31 October 2002	Not yet received
Jordan	Fourth periodic	21 January 1997	Not yet received
Kazakhstan[d]			
Kenya	Second periodic	11 April 1986	Not yet received
Kuwait	Second periodic	31 July 2004	Not yet received
Kyrgyzstan	Second periodic	31 July 2004	Not yet received
Latvia	Third periodic	1 November 2008	Not yet due
Lebanon	Third periodic	31 December 1999	Not yet received
Lesotho	Second periodic	30 April 2002	Not yet received
Libyan Arab Jamahiriya	Fourth periodic	1 October 2002	Not yet received
Liechtenstein	Second periodic		Not yet due
Lithuania	Third periodic	1 November 2009	Not yet due
Luxembourg	Fourth periodic	1 April 2008	Not yet due
Madagascar	Third periodic	30 July 1992	Not yet received
Malawi	Initial	21 March 1995	Not yet received
Mali	Third periodic	1 April 2005	Not yet due
Macau Special Administrative Region (China)[c]	Initial (China)	31 October 2001	Not yet received
Malta	Second periodic	12 December 1996	Not yet received
Mauritius	Fourth periodic	30 June 1998	27 May 2004
Mexico	Fifth periodic	30 July 2002	Not yet received
Monaco	Second periodic	1 August 2006	Not yet due
Mongolia	Fifth periodic	31 March 2003	Not yet received
Morocco	Fifth periodic	31 October 2003	10 March 2004
Mozambique	Initial	20 October 1994	Not yet received
Namibia	Second periodic	1 August 2008	Not yet due
Nepal	Second periodic	13 August 1997	Not yet received
Netherlands	Fourth periodic	1 August 2006	Not yet due

State party	Type of report	Date due	Date of submission
Netherlands (Antilles)	Fourth periodic	1 August 2006	Not yet due
Netherlands (Aruba)	Fifth periodic	1 August 2006	Not yet due
New Zealand	Fifth periodic	1 August 2007	Not yet due
Nicaragua	Third periodic	11 June 1991	Not yet received
Niger	Second periodic	31 March 1994	Not yet received
Nigeria	Second periodic	28 October 1999	Not yet received
Norway	Fifth periodic	31 October 2004	Not yet due
Panama	Third periodic	31 March 1992	Not yet received
Paraguay	Second periodic	9 September 1998	Not yet received
Peru	Fifth periodic	31 October 2003	Not yet received
Philippines	Third periodic	1 November 2006	Not yet due
Poland	Fifth periodic	30 July 2003	12 January 2004
Portugal	Fourth periodic	1 August 2008	Not yet due
Republic of Korea	Third periodic	31 October 2003	Not yet received
Republic of Moldova	Second periodic	1 August 2004	Not yet due
Romania	Fifth periodic	28 April 1999	Not yet received
Russian Federation	Sixth periodic	1 November 2007	Not yet due
Rwanda	Third periodic	10 April 1992	Not yet received
	Special[e]	31 January 1995	Not yet received
Saint Vincent and the Grenadines	Second periodic	31 October 1991	Not yet received
San Marino	Second periodic	17 January 1992	Not yet received
Senegal	Fifth periodic	4 April 2000	Not yet received
Serbia and Montenegro	Second periodic	1 August 2008	Not yet due[g]
Seychelles	Initial	4 August 1993	Not yet received
Sierra Leone	Initial	22 November 1997	Not yet received
Slovakia	Third periodic	1 August 2007	Not yet due
Slovenia	Second periodic	24 June 1997	Not yet received
Somalia	Initial	23 April 1991	Not yet received
South Africa	Initial	9 March 2000	Not yet received
Spain	Fifth periodic	28 April 1999	Not yet received
Sri Lanka	Fifth periodic	1 November 2007	Not yet due
Sudan	Third periodic	7 November 2001	Not yet received
Suriname	Third periodic	1 April 2008	Not yet due[f]
Swaziland	Initial	27 June 2005	Not yet due
Sweden	Sixth periodic	1 April 2007	Not yet due
Switzerland	Third periodic	1 November 2006	Not yet due

State party	Type of report	Date due	Date of submission
Syrian Arab Republic	Third periodic	1 April 2003	5 July 2004
Tajikistan	Initial	3 April 2000	16 July 2004
Thailand	Initial	28 January 1998	22 June 2004
The former Yugoslav Republic of Macedonia	Second periodic	1 June 2000	Not yet received
Timor-Leste	Initial	19 December 2004	Not yet due
Togo	Fourth periodic	1 November 2004	Not yet due
Trinidad and Tobago	Fifth periodic	31 October 2003	Not yet received
Tunisia	Fifth periodic	4 February 1998	Not yet received
Turkey	Initial	16 December 2004	Not yet due
Turkmenistan	Initial	31 July 1998	Not yet received
Uganda	Second periodic	1 April 2008	Not yet due
Ukraine	Sixth periodic	1 November 2005	Not yet due
United Kingdom of Great Britain and Northern Ireland	Sixth periodic	1 November 2005	Not yet due
United Kingdom of Great Britain and Northern Ireland (Overseas Territories)	Sixth periodic	1 November 2005	Not yet due
United Republic of Tanzania	Fourth periodic	1 June 2002	Not yet received
United States of America	Second periodic	7 September 1998	Not yet received
Uruguay	Fifth periodic	21 March 2003	Not yet received
Uzbekistan	Second periodic	1 April 2004	14 April 2004
Venezuela	Fourth periodic	1 April 2005	Not yet due
Viet Nam	Third periodic	1 August 2004	Not yet received
Yemen	Fourth periodic	1 August 2004	21 July 2004
Zambia	Third periodic	30 June 1998	Not yet received
Zimbabwe	Second periodic	1 June 2002	Not yet received

Notes

[a] At its fifty-fifth session, the Committee requested the Government of Afghanistan to submit information updating its report before 15 May 1996 for consideration at the fifty-seventh session. No additional information was received. At its sixty-seventh session, the Committee invited Afghanistan to present its report at the sixty-eighth session. The State party asked for a postponement. At the seventy-third session, the Committee decided to postpone consideration of Afghanistan to a later date, pending consolidation of the new Government.

[b] The Committee considered the situation of civil and political rights in the Gambia during its seventy-fifth session in the absence of a report and a delegation.

The situation of civil and political rights in Equatorial Guinea was considered during the seventy-ninth session without a report and delegation.

The situation of civil and political rights in the Central African Republic was considered during the eighty-first session without a report but in the presence of a delegation.

[c] Although not itself a party to the Covenant, the Government of China has assumed the reporting obligation under article 40 with respect to the Special Administrative Regions of Hong Kong and Macau, which were previously under British and Portuguese administration, respectively.

[d] Although a declaration of succession has not been received, the people within the territory of the State, which constituted part of a former State party to the Covenant, continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. I, paras. 48 and 49).

[e] Pursuant to a Committee decision of 27 October 1994 (fifty-second session) (see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40* (A/50/40), vol. I, chap. IV, sect. B), Rwanda was requested to submit by 31 January 1995 a report relating to recent and current events affecting the implementation of the Covenant in the country for consideration at the fifty-third session. During its sixty-eighth session, two members of the Bureau of the Committee met in New York with the Ambassador of Rwanda to the United Nations, who undertook to submit the overdue reports in the course of the year 2000.

[f] The Committee considered the situation of civil and political rights in Suriname at its seventy-sixth session, in the absence of a report but in the presence of a delegation. The State party had pledged to submit an updated and full periodic report by 1 July 2003. The second periodic report was submitted on 1 July 2003 and was considered during the eightieth session of the Committee in March 2004.

[g] The fourth periodic report of Yugoslavia was scheduled to be examined during the seventy-first session (March 2001). By note verbale of 18 January 2001, the Government requested a postponement. Prior to the seventy-fourth session, the Permanent Mission of Yugoslavia to the United Nations Office at Geneva indicated that a new report would be submitted by the end of the summer of 2002, in the form of an initial report (taking into account that Yugoslavia was admitted to membership of the United Nations by General Assembly resolution 55/12 of 1 November 2000). Following the adoption of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, the name of the Federal Republic of Yugoslavia was changed to "Serbia and Montenegro".

Annex V

STATUS OF REPORTS AND SITUATIONS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE

State party	Date due	Date of submission	Status	Reference documents
A. Initial reports				
Equatorial Guinea	24 December 1988	Not yet received	Country situation considered in the absence of a report and of a delegation on 27 October 2003 (new procedure) (seventy-ninth session)	CCPR/CO/79/GNQ CCPR/C/SR.2147 CCPR/C/SR.2148
Uganda	20 September 1996	14 February 2003	Considered on 22 and 23 March 2004 (eightieth session)	CCPR/C/UGA/2003/1 CCPR/CO/80/UGA CCPR/C/SR.2177 CCPR/C/SR.2178 CCPR/C/SR.2191
Liechtenstein	11 March 2000	26 June 2003	Considered on 14 July 2004 (eighty-first session)	CCPR/C/LIE/2003/1 CCPR/CO/81/LIE CCPR/C/SR.2200 CCPR/C/SR.2201 CCPR/C/SR.2220
Namibia	27 February 1996	15 October 2003	Considered on 15 and 16 July 2004 (eighty-first session)	CCPR/C/NAM/2003/1 CCPR/CO/81/NAM CCPR/C/SR.2203 CCPR/C/SR.2204 CCPR/C/SR.2205 CCPR/C/SR.2216
Serbia and Montenegro	12 March 2002	9 July 2003	Considered on 19 and 20 July 2004 (eighty-first session)	CCPR/C/SEMO/2003/1 CCPR/CO/81/SEMO CCPR/C/SR.2206 CCPR/C/SR.2207 CCPR/C/SR.2208 CCPR/C/SR.2223
Albania	3 January 1993	2 February 2004	Scheduled for consideration during the eighty-second session	CCPR/C/ALB/2004/1
Benin	11 June 1993	1 February 2004	Scheduled for consideration during the eighty-second session	CCPR/C/BEN/2004/1
Greece	4 August 1998	5 April 2004	Scheduled for consideration during the eighty-third session	CCPR/C/GRC/2004/1

State party	Date due	Date of submission	Status	Reference documents
B. Second periodic report				
Philippines	22 January 1993	26 August 2002	Considered on 20 and 21 October 2003 (seventy-ninth session)	CCPR/C/PHL/2002/2 CCPR/CO/79/PHL CCPR/C/SR.2138 CCPR/C/SR.2139 CCPR/C/SR.2140 CCPR/C/SR.2153 CCPR/C/SR.2154
Latvia	14 July 1998	13 November 2002	Considered on 28 and 29 October 2003 (seventy-ninth session)	CCPR/C/LVA/2002/2 CCPR/CO/79/LVA CCPR/C/SR.2150 CCPR/C/SR.2151 CCPR/C/SR.2152 CCPR/C/SR.2162
Suriname[a]	2 August 1985	1 July 2003	Considered on 18 and 19 March 2004 (eightieth session)	CCPR/C/SUR/2003/2 CCPR/CO/80/SUR CCPR/C/SR.2173 CCPR/C/SR.2174 CCPR/C/SR.2189
Lithuania	7 November 2001	11 February 2003	Considered on 24 and 25 March 2004 (eightieth session)	CCPR/C/LTU/2003/2 CCPR/CO/80/LTU CCPR/C/SR.2181 CCPR/C/SR.2182 CCPR/C/SR.2192
Central African Republic[b]	9 April 1989	Not yet received	Situation considered in the absence of a report but in the presence of a delegation on 22 July 2004 (eighty-first session)	CCPR/CO/81/CAF CCPR/C/SR.2212 CCPR/C/SR.2213
Uzbekistan	1 April 2004	14 April 2004	In translation. Scheduled for consideration during the eighty-third session.	CCPR/C/UZB/2004/2
C. Fourth periodic reports				
Sri Lanka	10 September 1996	18 September 2002	Considered on 31 October and 3 November 2003 (seventy-ninth session)	CCPR/C/LKA/2002/4 CCPR/CO/79/LKA CCPR/C/SR.2156 CCPR/C/SR.2157 CCPR/C/SR.2165
Belgium	1 October 2002	27 March 2003	Considered on 12 and 13 July 2004 (eighty-first session)	CCPR/C/BEL/2003/4 CCPR/CO/81/BEL CCPR/C/SR.2197 CCPR/C/SR.2198 CCPR/C/SR.2209

D. Fifth periodic reports

State party	Date due	Date of submission	Status	Reference documents
Russian Federation	4 November 1998	17 September 2002	Considered on 23 and 24 October 2003 (seventy-ninth session)	CCPR/C/RUS/2002/5 CCPR/CO/79/RUS CCPR/C/SR.2144 CCPR/C/SR.2145 CCPR/C/SR.2146 CCPR/C/SR.2159 CCPR/C/SR.2160
Colombia	2 August 2000	14 August 2002	Considered on 15 and 16 March 2004 (eightieth session)	CCPR/C/COL/2002/5 CCPR/CO/80/COL CCPR/C/SR.2167 CCPR/C/SR.2168 CCPR/C/SR.2183
Germany	3 August 2000	15 November 2002	Considered on 17 March 2004 (eightieth session)	CCPR/C/DEU/2002/5 CCPR/CO/80/DEU CCPR/C/SR.2170 CCPR/C/SR.2171 CCPR/C/SR.2188
Morocco	31 October 2003	10 March 2004	Scheduled for consideration during the eight-second session	CCPR/C/MAR/2004/5
Finland	1 June 2003	17 June 2003	Scheduled for consideration during the eighty-second session	CCPR/C/FIN/2003/5 CCPR/C/80/L/FIN
Italy	1 June 2002	19 March 2004	In translation. Scheduled for consideration during the eighty-fourth session	CCPR/C/ITA/2004/5
Poland	31 July 2003	21 January 2004	Scheduled for consideration during the eighty-second session	CCPR/C/POL/2004/5

Notes

[a] The Committee considered the situation of civil and political rights in Suriname at its 2054th and 2055th meetings, held on 22 and 23 October 2002, in the absence of a report, but in the presence of a delegation. At its 2066th meeting, held on 31 October 2002, it adopted provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure. Pursuant to the provisional concluding observations, the Committee invited the State party to submit its second periodic report within six months. The State party submitted its report within the deadline set by the Committee. The second periodic report was received on 23 June 2003.

[b] In observance of rule 69A of the Committee's rules of procedure, the documents concerning the examination of civil and political rights in the Central African Republic are provisional; therefore, their circulation has been declared restricted until the Committee has taken a final decision.

Annex VI

COMMITTEE DECISION OF 2 APRIL 2004 TO CONVERT THE WEEK OF THE MEETING OF THE WORKING GROUP ON COMMUNICATIONS OF THE EIGHTY-FIRST SESSION INTO A WEEK OF PLENARY MEETINGS, AND PROGRAMME BUDGET IMPLICATION STATEMENT

A. Committee decision

At its 2194th meeting, on 2 April 2004, the Human Rights Committee formally decided to convert the meeting of its Working Group on Communications, scheduled for and approved to be held from 5 to 9 July 2004, into a meeting of the plenary of the Committee.

B. Programme budget implication statement read on 2 April 2004

In the light of its workload and the large number of cases pending before it under the Optional Protocol, the Committee is requesting the Secretary-General to convert the meeting of its Working Group on Communications of the eighty-first session into a week of meetings of the plenary of the Committee. The one-week Working Group meeting immediately precedes three weeks of plenary meetings of the Committee, to be held from 12 to 30 July 2004.

Should the Committee adopt the above decision, additional travel resources in the amount of US$ 12,500 would be required under section 24, Human Rights. No relevant provisions have been made under the programme budget 2004-2005. It is anticipated, however, that the cost can be absorbed within overall resources included in the programme budget for the biennium under section 24, Human Rights.

Should the Committee not require summary records for the additional week of plenary meetings, there would be no additional conference servicing requirements. However, should the Committee require summary records for the week 5 to 9 July 2004, additional requirements would amount to $104,700 under section 2, General Assembly Affairs and Conference Services, in the biennium 2004-2005.

It will not be possible to absorb those additional conference servicing requirements, which would need to be met through additional appropriations by the General Assembly.

Annex VII

SELECTION OF DATABASES AND WEB SITES WITH INFORMATION ON DECISIONS ADOPTED BY THE COMMITTEE UNDER THE OPTIONAL PROTOCOL

Following is a list of databases and web sites with information on the publication of the Committee's decisions adopted under the Optional Protocol to the Covenant:

1. www.umn.edu/humanrts/undocs/undocs.htm
   Site of the University of Minnesota Human Rights Library

2. www.sim.law.uu.nl/SIMDOCHOME.nsf
   Site of the Netherlands Institute of Human Rights, University of Utrecht

3. www.bayefsky.com

Annex VIII

COMMITTEE DECISION OF 23 JULY 2004 ON WORKING METHODS UNDER THE OPTIONAL PROTOCOL

At its 2214th meeting, on 23 July 2004, the Human Rights Committee adopted the following decision on working methods under the Optional Protocol:

Decision

1. Do not radically change current procedure but proceed with gradual amendments to and improvements of the procedure.

2. While there appears to be agreement that, over time, the Working Group on Communications should be abolished, it is premature to do so at present.

3. The Petitions Team is invited to do even more to ensure quality control and consistency of drafts submitted to the Working Group.

4. Recommendations prepared by the Secretariat and agreed to by the case rapporteur should be distributed to all members of the Working Group as far in advance as possible.

5. Drafts adopted by the Working Group will be transmitted to the plenary as drafts resulting from the Group's deliberations. Members of the Working Group opposed to the draft, in its totality or partially, remain at liberty to transmit to the plenary alternatives to the options adopted by the Working Group.

6. Recommendations transmitted by the Working Group to the plenary should indicate who participated in the discussion in the Working Group and who opted for which solution.

7. Recommendations sent to the Working Group will henceforth contain "headnotes" (as for decisions included in the volumes of Selected Decisions under the Optional Protocol) at the beginning of the draft.

8. The case rapporteurs should limit his/her introduction to the plenary essentially to procedural and substantive issues, as issues of form and factual issues should in principle be settled by the rapporteur on the basis of observations made previously by members.

9. Committee members will give all due consideration to (draft) recommendations transmitted to them, so as to enable them to provide their observations, on both factual and substantive issues, to the case rapporteur.

10. The Petitions Team will endeavour to use, whenever possible, templates that reflect standard jurisprudential formulae on admissibility issues and, if possible, substantive issues.

11. The Secretariat should, where possible, distribute reference materials and/or pertinent jurisprudence to Committee members if this would help the discussion of the draft.

12. The Committee will evaluate, in due course, the implementation of the present proposals and will take the appropriate consequences.
